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FINAL REPORT OF THE FINDINGS OF  
A COMMUNITY CONSULTATION  
ON THE  
PERCEPTIONS OF RACIAL MINORITIES RELATED TO THE  
SERVICES OF THE MINISTRY OF THE ATTORNEY GENERAL

Submitted by  
**Equal Opportunity Consultants**  
671 Mt. Pleasant Road  
Toronto, Ontario  
M4S 2N2

488-9009  
Fax 488-4722

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## EXECUTIVE SUMMARY

This report describes the results of a community consultation undertaken in response to a request for proposal from the Ministry of the Attorney General. The objective of the study was to find out how racial minority group members perceive the services of the Ministry. The results of this consultation, as well as other projects should provide a review of the major gaps and needs within the service delivery system of the Ministry as these impact on the multiracial, multicultural and multilingual populations of Ontario.

Two methods of data collection were used. Ethnocultural and racial minority organizations, agencies providing service to these groups, and individual spokespersons from these communities, were identified. A questionnaire was sent to 123 groups and 50 were returned. In addition, 65 key individuals in these associations and organizations were personally interviewed. The majority of respondents were in Toronto but Windsor, Ottawa, Thunder Bay and Hamilton were also visited. (Aboriginal groups and individual spokespersons were included in the consultation.)





The many views and opinions expressed both in the questionnaire and the personal interviews reflect the perceptions of the community and should not be taken as 'statements of fact'. <sup>1</sup>

### Findings

1. On the whole, this Ministry is not seen as a service provider and some of its specific services such as those of the Official Guardian, Support and Custody Order Enforcement, and the Office of the Public Complaints Commissioner, are not familiar to these communities. The Attorney General is seen as administering criminal justice through the courts although that too can be defined as a form of service provision.
2. The work of this Ministry is seen by the community as part of a larger societal context. Many people noted that racism in society plays a major role in erecting barriers to the advancement of members of minority groups. All institutions therefore are subject to this criticism. Furthermore, the equitable administration of justice was related to issues other than race and

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<sup>1</sup>. The short turn around time for the survey prevented a larger questionnaire return. A statistical analysis was, therefore, not attempted. The opinions, criticisms and comments noted in this report were very consistently expressed by a majority of respondents.



included gender, and class. Poverty and under education were specifically cited as some of the underlying causes of unequal treatment.

3. Members of these communities know very little about the law and their rights and what little they do know relates to the work of the police forces. They feel they understand the role of the police but the entire criminal justice system is a "big mystery" and a source of confusion, anxiety and stress.
4. The criminal justice system was specifically criticized for being unrepresentative of the increasingly diverse population of Ontario. The most frequent complaint was that the overwhelming majority of judges, Crown Attorneys, lawyers, bureaucrats and other staff are White, mostly male and mainstream. Judges were criticized for attitudes, and behaviours which are stereotypic and in some instances clearly racist. Crown Attorneys and Justices of the Peace were also thought to hold and act upon their negative stereotypes about racial minority people.
5. The differential and negative treatment of racial minority accused was cited in areas such as methods of jury selection, convictions, sentencing and pleas.



6. Another area of concern relates to the question of legal defence. It was thought that there were too few racial minority lawyers within the system and in law schools.
7. The system of legal aid was thought to contain some very problematic aspects and there was some difference of opinion, especially within the Black community, with respect to the use of majority mainstream White lawyers as compared to racial minority lawyers.
8. Most issues raised with respect to Family Court service were about the lack of knowledge and sensitivity to the diverse cultural and linguistic backgrounds of many minority group members.
9. The major issues of concern to the Black community were the racial barriers within the criminal justice system. The very presence of large numbers of Black people in the courts was itself seen as evidence of racial discrimination. There were critical concerns among Black youth who do not understand the system yet all too frequently come in contact with it.





10. While South Asians agreed with the allegations of discrimination, many of their concerns centred around cultural barriers. For South East Asians, the issue of language and its related problems was most frequently cited.
11. All of the issues identified by these groups were shared by members of Aboriginal organizations. In addition, however, their perception of the Ministry, and particularly the administration of justice as it affected them, was critical to the extent that they want to establish their own justice system.

Overall Finding:

Racial minority groups perceived the service delivery of the Ministry in extremely negative terms. Racial minorities do not believe that the system is equitable and this has serious implications for the future of this society.



## Recommendations:

In addition to a large number of recommendations made by community members themselves, this report concludes that two strategies of action should be considered:

1. The Ministry must respond to the frustrations of these communities and their many needs which presently are unfulfilled, by raising its level of knowledge, skill and sensitivity. A comprehensive program of race relations and multicultural training with specific focus on the work of judges, crown attorneys and other court personnel is suggested.
2. While community perceptions are necessary to inform the Ministry, they cannot substitute for systematic research on the issues raised. There is now a need to conduct research on court issues such as sentencing and the many other examples of differential treatment cited by respondents. There is now a need to go beyond community perceptions to the level of concrete, empirical reality.



## 1 - INTRODUCTION

In response to the request for proposal to establish a process of consultation with community groups across the province representing diverse racial, cultural and Aboriginal groups, Equal Opportunity Consultants is pleased to submit this report.

Its purpose is to provide a detailed analysis of the data gathered during this process of consultation. The community consultation combined with materials drawn from other studies and reviews (report of Avebury Consultants and 1: "Methodology for Design of Study of Racism in the Courts" and 2: "Public Legal Education") should provide an in depth review of the major gaps and needs within the service delivery system of the Ministry of the Attorney General as these impact the multiracial, multicultural and multilingual populations of Ontario.





## 1-2 Methodology

In undertaking this consultation, the consultants chose two major approaches to the collection of the required data.

### a) The Survey - Questionnaire

In the first instance, names of ethnocultural organizations, community based advocacy groups, community legal service clinics, legal aid plan offices, and Aboriginal associations were identified and lists of these organizations were prepared.

Two questionnaires were designed; one for ethnocultural and other community based organizations and one for Aboriginal associations. Closed coded and open ended questions were devised which sought the views and perceptions of the communities with respect to the services of the Attorney General.<sup>1</sup> Questions were phrased in such a way that the person chosen by the organization to respond need not have been a member of a racial minority group. The instructions stated that the questions were to be answered from the perspective of the racial minority group with which the organization was most familiar. Some of the community service based organizations decided that the questionnaire could best be answered by a racial minority member of staff. While this resulted

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<sup>1</sup>. Copies of both questionnaires are in Appendix A. A list of all organizations who returned the questionnaire is also included as Appendix B.



in some valid responses, it also meant that groups who did not have such a person in their employ, or, in some instances where the appropriate person was away, or on holiday did not complete the questionnaire.<sup>2</sup>

Questionnaires were mailed to 123 organizations and 50 were returned. (The names of the organizations who responded to the survey are listed in the Appendix)

#### b) Personal Interviews

In addition, major spokespersons in ethnocultural communities and those working in neighbourhood legal clinics and other service delivery organizations, including mainstream and minority lawyers were identified. Spokespersons from 45 organizations were interviewed. In some organizations, more than one person was questioned. As well, some respondents such as lawyers did not represent a specific organization but spoke generally from the perspective of the communities they represented or were closely identified with. Sixty five interviews were conducted.<sup>3</sup>

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<sup>2</sup>. Questionnaire responses from Native Organizations are incorporated in the general discussion of results found throughout the text. A special section on Native Concerns is, however also included.

<sup>3</sup>. The sex, race and age of the interview sample is presented in Appendix C.



Although the interviews were guided by a 'schedule' which included a number of key questions, they tended to be fairly unstructured and conversational in nature. In a few instances, small group focus interviews, consisting of 4 to 7 persons were also employed. This relatively 'loose' approach yielded unusually rich and in depth data. As well, the subject matter was of intense concern to most respondents; many were critical of the Attorney General's service delivery and welcomed the opportunity not only to share their views and opinions but also to make them known to relevant ministry officials. The interviews ranged from one hour in duration to five hours. Because so many of the respondents considered the subject matter to be of utmost importance to them and their organizations, no resistance was encountered in arranging or conducting the interviews. In fact, in some instances, after two or more hours of discussion, some respondents suggested another meeting to 'continue the dialogue'.

At the conclusion of many of the interviews, respondents suggested the names of other persons who should be included in this study either because they represented different organizations or because they had some specific perceptions and information to contribute. Where possible, they were added to the list of persons to be interviewed. As a result of this very cooperative response from the communities, the findings are than likely to be reliable and valid indicators of community perceptions, needs, concerns, criticisms





and recommendations with respect to the services of the Ministry of the Attorney General.<sup>4</sup>

The community consultation elicited the views, opinions and perceptions of respondents. The respondents were selected because they were spokespersons or opinion leaders in their communities. For purposes of this report, a "community perception" was any opinion, point of view or point of information expressed by at least three (or more respondents) either in personal interviews or in the questionnaire survey. Specific comments, criticisms and allegations made by one person were always checked with several other participants in this consultation.

#### c) Site Visits

The majority of the personal interviews were conducted in Toronto but in addition, Hamilton, Windsor, Thunder Bay and Ottawa were visited. Of the total number of personal interviews, 24 were conducted outside of Toronto. The survey questionnaire was distributed in areas of the province including Windsor, Thunder Bay, Ottawa, and Hamilton.

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<sup>4</sup> These findings will be discussed using both data sources, the personal interviews as well as the analysis of the questionnaire results. Where feasible the specific numbers drawn from the analysis of the survey will be shown in brackets in the text. Other findings are included in end notes.



### 1-3 Methodological Constraints

The methodology used in this consultation was constrained by a number of factors. In order to obtain a sufficient number of respondents, a survey design was used. The identification of organizations, the constructions of questionnaires, mailings, waiting for returns, analysis of results and preparation of the draft report was all done in less than three months.

Despite great care in identifying and locating a representative sample of racial minority organizations, a number of them did not respond. Many of these organizations are small, understaffed and some do not have the time or resources to answer questionnaires. As well, such organizations change their administrative offices fairly frequently and in the short turn around time, it was not always possible to locate them.

Although 50 returns were received, not all questions were answered in each questionnaire. In the final analysis, those questions which were answered by many respondents were tabulated and incorporated into this report. In other cases, questionnaire responses were treated as individual responses. A more comprehensive quantitative analysis was not considered feasible. The majority of the issues discussed in this report, however, are those on which there was a considerable amount of community consensus.



The responses and perceptions of these communities in some cases may not conform to actual facts, procedures and practices. However, the mandate of this consultation did not include the verification of allegations nor would time have allowed for such a process.

Despite these constraints, the respondents interviewed and the organizations who participated in the survey represent an articulate, knowledgeable and informed body of opinion. Moreover they are highly respected and credible individuals, most of whom play significant leadership roles in their respective communities. A few respondents from service organizations were not members of racial minority groups themselves but they had had extensive experience in working with community groups and communities. The perceptions and views expressed throughout this document therefore are a valid and reliable reflection of racial minority community concerns. Many personal examples and direct quotes have been included in this report in order to give voice to these observations.





## 2 - Outline of this Report

In carrying out this study, it became very clear that community spokespersons both within ethnocultural organizations as well as those who worked in service delivery organizations themselves had a great deal to say about the criminal justice system, and, to some extent, the barriers faced in accessing other services of the Attorney General. In organizing this report, the descriptive categories themselves, therefore, reflect the dominant interests and concerns of the community members interviewed and surveyed in this project. Accordingly, this report is divided into the sections described below. Because so much of what people said relates to many aspects of the total system, there is some unavoidable overlap.

It is important to stress at this point that the comments, concerns and criticisms described in this report are those made by the community respondents interviewed and surveyed. Verification was not part of the consultative process and the statements made by community respondents may or may not reflect reality. Neither do they necessarily reflect the views or conclusions of the consultants.



The sections of this report are:

- Interpretation of the Mandate: General Comments on Service Delivery

Knowledge about the Law and Civil Rights;

Jurisdictional Issues: The Attorney General, the Solicitor General and Ministry of Corrections

Perceived Racism in Canadian (Ontario) Society and its Impact on the Ministry of the Attorney General

Legal Issues

- The Criminal Justice System: Personnel
- The Criminal Justice System: Differential Treatment<sup>2</sup>
- Issues Relating to Legal Defence
- Issues of Greatest Concern to:

Black community; including Black youth  
South Asian community  
South East Asian community  
Aboriginal communities

- Recommendations made by community members.
- Conclusions



### 3. Interpretation of the Mandate: General Comments on 'Service Delivery'

One respondent wrote in large letters next to the service question: " What services?"

The ethnocultural organizations included in this study do not, on the whole, see the Ministry as a provider of service. In answer to the question, "Are minority people familiar with the services of the Ministry", not familiar, was most frequently chosen in 27 out of 38 cases. Moreover, a majority of survey respondents (17) strongly or moderately believed that "there is a lack of information on the services of the Attorney General"

There was general agreement that "the Attorney General needs to improve community outreach". These survey results were substantiated in the interviews many times not only by members of ethnocultural groups themselves but also by the spokespersons who supplied services to them. Lawyers, community legal and para legal workers and others noted that minority people are not only very unfamiliar with the Ministry services but in many cases, they believe that the Attorney General is also responsible for the police. In general the Ministry is seen as administering criminal justice through the courts and not as a provider of service as that term is customarily defined. It can, however, be argued that administering the criminal justice system is also a form of service provision.





The questionnaire asked respondents to identify barriers to service delivery. The three most frequently listed barriers to service delivery were:

- a) lack of knowledge about services
- b) inaccessibility of services
- c) lack of information about services

The survey revealed that a number of respondents were familiar with services such as those of Support and Custody Order Enforcement, and the Official Guardian, but in all cases, these responses came from the organizations which themselves supplied health, social service and legal services to the minority communities. Moreover, community service agencies reported on the many barriers to service experienced by their minority clients. These will be described in a later section.



### 3-1 Knowledge About the Law and the Civil Rights of Individuals

A basic problem underlying the whole area of service delivery and accessibility to the justice system is that the majority of racial minorities (and others, one presumes) lack important knowledge about their civil and legal rights. They do not understand court and legal procedures, the nature of the laws themselves, how to find legal counsel, the role of community legal clinics and many other aspects of service delivery. The lack of knowledge was noted in many different ways by the majority of groups consulted in this study. A survey question asked: "are minorities familiar with the law and their rights"? An overwhelming number (42 out of a total of 49 who answered this question) said 'no'. While this problem is particularly acute for the youth, and especially Black youth, it applies to adult members of racial minority groups as well.

Many people believe that the rules and procedures shown on American television courtroom dramas apply equally to Canada. People who come from countries which have not in the past been affiliated with Great Britain, or the Commonwealth, are not familiar with British law. Upon arrival in Canada they are faced with a legal system which is relatively new to them.

The complexity of the law and legal institutions, which are difficult to understand for most mainstream members of society,



does, of course, exacerbate the problem for immigrants. One very outspoken critic said:

"The legal system is a joke. It seems to be an intellectual exercise between lawyers. The law is written in complex language which no one can understand, never mind second language speakers of persons who are semi-literate. This leaves a new immigrant dependent on someone else."

Finding a lawyer or legal advice is extremely difficult for people not familiar with the system. Peer groups and networking are the major sources of information.<sup>5</sup> The lack of information about basic civil and human rights is so severe that "the field of law is like a secret society" according to one respondent. People go into court without knowing the rules which increases reliance on lawyers. Difficulties in working with lawyers compounds this problem further.<sup>6</sup> A number of recommendations at the end of this report address concerns about educating the public, particularly members of racial minority groups.

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<sup>5</sup>. We return to this point in the section on service delivery.

<sup>6</sup>. Discussed below.





### 3.2 - Jurisdictional Issues Between Ministries

Another point of great concern relates to the artificial boundaries between Ministries. For many people, the law means the police. Most of the respondents began the discussion by talking about the police. ( A respondent to the questionnaire actually phoned our office to ask why there were no questions about the police because "that's where all the problems begin".) On a returned questionnaire, the writer noted in bold print:

"Although this is not the Attorney General, the police probably present one of the greatest problems for minority groups. It seems strange that in a legal system two different ministries are responsible."

In reality, the complexity of relationships between people and the law is continuous throughout the system. It begins with the Ministry of the Solicitor General and the critical role of the police, moves to the courts and other services of the Attorney General and finally leads to the Ministry of Corrections and the important role of the penal system. Police brutality and racism in the jails are concerns of minority groups, particularly Blacks and the Native People, and they cannot readily be divorced from the analysis of the services offered by the Attorney General. Often the first point of contact with the system is the police even in cases of simple traffic offences or landlord tenant disputes. When, as



in the case of some visible minority communities and especially newcomers, there are also language barriers impeding the free flow of communication, problems with the police - community relationship take on another dimension.

While the minority group members themselves are concerned primarily with police harassment, brutality and a general insensitivity towards minorities, a somewhat more sophisticated criticism of the relationship between the police and the Crown Attorneys is made by minority members of the legal profession. They make the important connection between the type and numbers of charges laid by the police against minority persons and the response to such charges by the Crown Attorneys. It was suggested that Crowns must take more responsibility for allowing police charges to actually go to court. One minority lawyer noted:

"The Crown must look at [certain] police charges first, and say that these charges are ridiculous. If the system does not allow the Crown to say that, or if there is no time, the Crown should him/herself say: 'I understand that the police officer has limited resources and limited choices, but I'm also a lawyer and it is my job to face these issues in court and these charges will simply not hold water and they should be withdrawn ahead of time to enable a proper defence and a fair adjudication of the issues.'"

Another went even further to question the very relationship between the police and the Crown Attorneys:



"The myth that has been allowed to flourish is that the relationship between the police and the Crown Attorney is at arms length, this isn't true. Police officers need to put their cases, the Crowns feel they have to become popular so that they will get cooperation in the next case, like Tweedledum and Tweedledee... We need to question this relationship..."

Others also voiced these concerns while making the more general point that in any case, the distinctions between these Ministries are not familiar to most members of the public and particularly minorities, many of whom are newcomers to this society. Members of minority communities commented that the Attorney General should take some responsibility for police actions which affect the disposition of cases involving minority accused. The Attorney General should play the role of "advocate" in all areas.

Respondents also believed that the dimension of service delivery could probably be much improved if there was some integration of the three Ministries most actively involved with the administration of justice. Recommendations to this end were made.





### 3-3 Some Related Service Delivery Issues: The Office of the Public Complaints Commissioner.

As noted earlier, many people talked extensively about the police but most of that information is not included in this report. There were however a few specific comments made about the Office of the Public Complaints Commissioner.

For the most part, it was noted that very few community members knew about this office and its role within the Ministry of the Attorney General. A substantial number of people do not know that they can use this office to lay complaints against the police. In fact, the common perception is that there is no such mechanism within the system. The only office is in Toronto so that knowledge of its services do not go beyond the confines of this city. There is legislation before the House which would open similar offices in other areas of the province and that may enhance its profile but as of this time, it is relatively 'invisible' as far as ethnocultural and racial minority communities are concerned.

This office was also criticized for a lack of minority representation. It was alleged that racial minorities do not occupy positions of authority and that no one beyond the level of secretary was a member of a racial minority. (This allegation is, however, incorrect since there are three racial minority staff members who are above the rank of secretary.)



### 3-4 Perceptions of Racism in Canadian (Ontario) Society and its Impact on the Office of the Attorney General

Many persons interviewed began the general discussion by noting that the aspects of service delivery, including the criminal justice system, must be understood within the context of a larger society in which racism plays a major role in erecting and perpetuating barriers to the advancement of members of racial minority groups. Many respondents thought that institutional or systemic racism is found in all the institutions of society. It is understood that the public sector is not immune to these dynamics and racism is therefore to be expected. The Ministry of the Attorney General should therefore not necessarily be singled out for special criticism.

There is also the feeling that the problems associated with the equitable administration of justice to minority communities cannot be understood without reference to other concerns in society. More specifically, the relationships between poverty, race, and gender were frequently discussed. The problems associated with being poor and uneducated were often cited as underlying causes not only for unequal treatment but also for the substantial numbers of such persons who 'run afoul' of the law and are forced to use the system. A common theme running through many of the discussions related to the nature of the social class bias as it operates in the justice system. The idea that "the justice system as a whole discriminates against the poor, the working class,



women, racial minorities and other victims of society" was expressed often and eloquently:

"if you're poor, come from a home where you were raised by a mother, no father to speak of, live in subsidized housing, dropped out of school, get onto drugs, get in trouble and you're Black, what chance do you have?"

On the other hand:

"if you live in a fine neighbourhood like Rosedale and have solid respectable WASP parents - and you flirt with drugs and get into trouble... the next thing you know is that Daddy has hired a good (and very expensive) lawyer, you're out on bail in no time and you probably get a suspended sentence, if any at all!"

#### The War on Drugs: The Black Community's Perception

The greatest concern in terms of the relationship between the Attorney General (and other Ministries) and larger forces taking place in society is expressed by spokespersons from the Black community. These concerns are centred around the 'drug problem'. Although this is largely a matter of Federal jurisdiction, the provincial courts and judges handle most of the day to day cases. There is a commonly expressed view in the Black community which alleges that the "war on drugs" is a deliberate and conscious form of racial discrimination directed against them.

In the last two years, police attention has been focused almost entirely on this issue. Even the city of Toronto has launched a







war against drugs, and hired a commissioner to help contain the widespread use and distribution of drugs particularly amongst the youth. The results of all these directives, however, is that the police are given even greater 'sweep powers' which results in much more frequent attempts to "clean up" the Metro Toronto Housing Authority units and other poor areas of the city. A White mainstream lawyer with many years of experience with Black clients said that in such a 'sweep', as many as 50 can be arrested and charged when, in fact, only a few may be guilty.

This observation was supported by members of the Black community and especially the youth.<sup>7</sup>

Moreover, it is alleged that drug sweeps hit poor and Black area while middle class neighbourhoods are rarely 'swept'. This results in fewer mainstream persons being charged with drug use, possession and distribution despite the fact that many of the "big players" are, in fact, white, mainstream, middle and upper class members of society. The incidence of use, possession and distribution of drugs in the white communities, is likely equal to or greater than, that of the smaller, more visible Black groups according to this point of view. "Its just that the whites don't get caught, but they go out of their way to get us" as one Black spokesperson noted. The Black community sees the war against drugs as

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<sup>7</sup>. The consultants are not aware of studies undertaken of police charges that are in the public domain.



discriminatory because it gives even more power to the police to make arrests and lay charges.

Members of the community as well as both mainstream and Black lawyers note that the reason that the number of Blacks accused is totally out of proportion to their numbers in Toronto (or Ontario) is the direct result of police actions which, in turn, flow from the 'war on drugs'. As more and more Blacks crowd into the courtrooms, Crown Attorneys, judges and other staff members become convinced that Blacks are prone to criminal behaviour. It reinforces the negative stereotypes they already have about Black people and contributes to the process of the 'racialization of crime' - the equation of 'Black equals Crime'. (The practices which support this belief are already very apparent in both Great Britain and the United States.)

Moreover, as the evidence of 'Black Crime' hits the public eye through the media and other forms of communication, the belief that only Blacks are responsible for the widespread drug problem in this city is reinforced in the community at large.

The war on drugs campaign is not the only concern in the Black community. It is alleged that there is a much larger, concerted effort to confront what are called "visible" crimes, or those committed by Black people. In addition to drugs, pimping, common assault, break and enters and one or two others are included in



this category. (Charges laid for impaired driving are also a frequently laid but this affects the mainstream population in equal measure.)





### 3-5 -Legal Issues

One important concern for minority communities who daily face the pain of racial discrimination particularly in the workplace and in attempts to find appropriate housing, is that the act of discrimination cannot by itself be taken to court. It does not fall into the legal classification of a tort and a claim of discrimination cannot therefore be made and acted on in court. Since the Supreme Court ruled in 1981 that discrimination can only be addressed by the Human Rights Commissions, many submissions made to the Equality Now report strongly recommended that legislation be enacted which would make discrimination a cause of action in civil actions.<sup>8</sup> This recommendation was made many times in discussions with minority lawyers. The suggestion was made that the Attorney General could play a more proactive role in advocating these important changes in legislation. On the other hand, it was also noted that there are sections of the Ontario Human Rights Code which clearly state that discrimination is an offence but these have never been prosecuted in court.

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<sup>8</sup>. Equality Now, Report of the Special Committee on Visible Minorities in Canadian Society. Bob Daudlin, M.P. Chairman. Ottawa. March 1984.  
See especially recommendation 43, p. 77: "Justice Canada should prepare amendments to the Canadian Human Rights Act and the provinces should amend their anti-discrimination laws to allow a complainant the option of instituting civil litigation against a discriminator rather than making a complaint to the Human Rights Commission."



#### 4. THE CRIMINAL JUSTICE SYSTEM: PERCEPTIONS

The criminal justice system "presents the most mysterious of all the government systems" noted a Black community spokesperson.

"Its the one we know least about... and for us, relating to the Attorney General ends up 'as the rubber hits the road', that's where the most damage seem to be done - we understand what happens with the police, but beyond that, in the law courts, what happens and why its decided, we don't understand that"!

Another said that one can complain about the actions of the police, "but about the court system, to whom do you complain"?

An even more telling comment makes the point: "To whom does one go when they feel that they have been discriminated by the courts?"

The system is seen as remote, complex, slow, cumbersome and extremely difficult to understand. The language is not "English but "legalese". The law and the procedures used in the court of law are difficult for even mainstream persons to comprehend and these difficulties are magnified for newcomers to this society. Other frequently used words to describe the system were: "intimidating, painful, fearful, fill one with terror, humiliating". Emotional pain and humiliation are often experienced. A young Black man explained:



"the pain and degradation I've felt in viewing some of the things I've seen in courts is extremely unsettling and unnerving for those of us who are intellectual enough to understand. I've seen people mentally bend under the pressure of not understanding".





#### 4-1 The Criminal Justice System: Court Personnel

The lack of minority group representation in the legal system has important equity related problems. Comments such as "it is not our system, we don't get to have a piece of it" were noted in almost all of the interviews. This common complaint centres about the fact that the large majority of judges, crowns, lawyers and other personnel are members of the white mainstream population. The complaint is so common that a group of Black lawyers in Ontario have formed the Delos Davis Law Guild to better represent their needs and to act as a lobby group to pressure government to appoint more Black judges, hire more Crown Attorneys, Justices of the Peace and other members of the judicial establishment. It is estimated that there are only about 100 Black and South Asian lawyers in Ontario and of these only about one fifth do criminal law. There are only about six racial minority Crown Attorneys. There has been a recent effort to increase the number of Justices of the Peace but even here the numbers are still small. There are said to be only three non-White judges in the Ontario system.



Almost any courtroom in Toronto today will provide evidence for these important criticisms. In most instances, accused racial minority members face an all white system. On a recent visit to the Provincial courtroom on Queen Street, the researchers walked into a courtroom where a trial was just beginning.

- On trial were five youths charged with forceable confinement and rape. Two of the youths were South Asian, three were Black. The victim was a young Black woman. Each of the five youths had retained a White lawyer. We observed that there was a senior, elderly White male judge, a female white Crown Attorney, a White male assistant Crown Attorney, a White law clerk and a White court reporter. In addition, there was a row of five White lawyers some of whom had their own White legal assistants. The Black accused sat to one side. Members of the public seated at the rear of the courtroom were almost entirely racial minorities. They were the families, friends and school mates of the accused. The stark picture of a White legal establishment offering service to non-white clients could not have been more obvious. Thus, the comment made by a Black lawyer: "we need to feel its our system too".

More specifically, many respondents called attention to the important role of the judge within the courtroom. Strong criticism was aimed at the judiciary.



#### 4-2 Perceptions of Judges: Behaviour and Attitudes

A summary of the main perceptions of judges includes the following:

- Judges are White, male, elderly and conservative

- Judges behave according to stereotypes. Judges know nothing about the racial minorities, the people, their values, their cultural backgrounds, etc. They see minority people only in the court situation as defendants, charged by the police with criminal offences. Judges hold stereotypic views: Black people are prone to criminal behaviour as witnessed by the fact that there are so many of them in the court system. Sikhs are vicious and untrustworthy. Racial minority people are stupid, uncomprehending, and too lazy to learn English.

As a community leader noted:

"Our justice system in Canada is operating in isolation. Sometimes I wonder if they know what the realities are out there in this city. There is a basic problem with the judiciary. Everybody seems to back off more, and more people of colour are appearing before these judges, and the judges are operating in isolation. Many of them think that visible minorities should not even be here in this country."





- Judges make racist comments from the bench: 9

- \* In a case involving an East Indian charged with assaulting a Chinese man, the judge said: "this couldn't have happened as alleged. Both are visible minorities".
- ✓ \* Another case involved a man who broke the window of his estranged wife's house, paid for it, and made restitution to his wife. In court, the judge said "you people come into this country and behave in unacceptable ways. I won't go along with this". (the man was convicted of assault.)
- ✓ \* A lawyer asked for conditional discharge for a youth of 19 whose case had all the elements for a compassionate hearing. The judge said "I'm not accepting that. People like him need to be sent to prison" and gave him 90 days. (The defence lawyer maintained that had his client not been Black, the judge would have agreed to the conditional discharge.)
- ✓ \* A lawyer related an incident in which a young African charged with possession of 0.4 gram of marijuana was silent. The judge asked the duty counsel "does he hear what is happening" and because the young man remained silent asked again "does he understand what is happening?" implying that the silence of the racial minority accused indicated a lack of comprehension or stupidity.
- \* A Black lawyer defending his young client argued that the event did not happen in the way it was described by the police. The judge said: "This officer is a Canadian citizen. Are you doubting the word of a Canadian citizen?"
- ✓ \* While sentencing a tall, heavily built Black man convicted of trafficking a small amount of cocaine, the judge stated: "I'm afraid of you, I'm going to give you a year in prison"

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9. These incidents were related by minority lawyers. They came out of their own experience in court and were cited as examples of "racist" comments from the bench.



\* Most lawyers have heard judges make comments from bench which begin with the statement: "you Black people..."

- There is a perception of differential treatment by judges. For example, in cases where defence counsel wants to bring in an additional expert witness for a minority accused, judges will rarely grant an adjournment for the defence to find that person. Whereas in cases where the defendants are Whites, the judge will far more readily agree to a long recess or an adjournment for a day.
- Some defence lawyers have attempted to challenge the jury for cause, citing racism. Judges rarely allow this because they maintain that any accused, regardless of racial status will receive fair treatment by the jury. The mounting evidence of racism in the population and the possible impact of this on jury selection is not regarded as sufficient reason to allow for this form of challenge.

In addition to these criticisms, survey respondents were asked about the ways in which minority clients were treated by judges. Of the total number of respondents, only 12 did not answer this question and these were from organizations which did not have specific contact with the courts. All the remainder made negative, critical comments including:



- \* judges treat racial minorities differentially and stereotypically (cited 12 times)
- \* Judges lack cultural sensitivity (6)
- \* Judges are arrogant, condescending, sarcastic (4)
- \* Judges presume racial minorities are guilty even before the trial; Judges give racial minorities harsher sentences; (5)
- \* Racial minorities lack trust in the system; are fearful of the judge (3)

To the specific question, "is there a belief that some judges are prejudiced against racial minority people?", 25 said 'yes' or 'sometimes'. (Respondents from organizations who had little contact with the courts, omitted this question or answered 'don't know')

A general conclusion can be drawn from these results. On the whole, both persons interviewed as well as those surveyed, were highly critical of the attitudes and behaviours of court room judges. While members of the community do not generally differentiate between judges, members of the legal profession are able to make these distinctions. They are, in fact, able to identify and name those judges at each level of the legal system and, as well, in specific regions of the city, who are racially intolerant in their attitudes and discriminatory in their behaviour.







#### 4.3 - Perceptions of Crown Attorneys: Attitudes and Behaviour

The community's general perceptions of Crown Attorneys is similar to that of Judges. Crown Attorneys come out of the same system as the judges, believe in and act on similar stereotypes, and are untrained with respect to minorities. They are in the main White and male, but it was recognized that a significantly larger number of women are now employed as Crown Attorneys. The community believes that their role in the system is to achieve convictions and they do this with vigour, largely ignoring the special needs of minorities.

Minority members of the legal profession are particularly critical because they feel that Crown Attorneys in general have too much power in the court. A well known lawyer of South Asian background described his experience in court as an immigrant and before he became a lawyer:

"the terror that I felt in the court came ...from the Crown Attorney. He approaches the accused the moment he comes into court. One has to go into the mind of an immigrant who is innocent, or is a victim of circumstance and already he/she has not been given a fair shake by the police... but you are told that you will have your day in court. But then you meet somebody who is arrogant, who controls the entire court procedures and who can tell you to 'shut up' in front of the judge!"

When, in addition, Crown Attorneys are racially intolerant and indulge in stereotypic thinking, their danger to minority accused



is even greater. As noted earlier, Crown Attorneys are also criticized for working too closely with the police and for not assessing police charges, particularly those laid against Black people, more attentively.

Another specific charge against Crown Attorneys is that they have on file a cadre of professional witnesses such as psychologists and psychiatrists who are used in cases regardless of the fact that they do not understand the racial and cultural backgrounds of the accused. In one case, a defendant's lawyer instructed him to cooperate with the prosecution psychologist by answering questions about himself and his cultural background. ( The accused was from Jamaica.) The defence lawyer specifically asked his client not to discuss aspects of his case. When the psychologist was called by the Crown, he was asked specific questions about the case. The psychologist maintained that the witness had refused to discuss his case with him. This refusal, although the accused was following his own counsel's instruction was taken as evidence of the uncooperative and anti-social nature of the accused. (This problem of evidence is, however, not specific to racial minorities). In addition, the Crown will call upon expert witnesses who know nothing about the defendant's culture, language, values etc. Their sometimes culturally insensitive reports and assessments are then assumed to be valid by the Crown in making the case against the defendant. Moreover, the defence lawyer, often working on a Legal



Aid Certificate does not have the resources to call counter expert witnesses.

The specific functions and roles of the Crown Attorney within the system are not clearly understood by members of the racial minority communities. Survey responses therefore yielded a high proportion of 'don't know' or missing responses to the question about Crown Attorneys. Of the 14 responses to this question, however, all but one were critical and most of these cited the cultural insensitivity of Crown Attorneys.





#### 4-4 Perceptions of the Justice of the Peace

The role of the Justice of the Peace within the system is not very well understood by the community.

Of all the racial minorities surveyed and interviewed, members of the Black community knew most about one area of Justice of the Peace's responsibility and that is their decision making function with respect to bail, and bail hearings. They also validate the financial credibility of sponsors. Given the fact that, with few exceptions, they are also mainstream males, their knowledge about minorities is very limited and their decisions often tend to be guided by stereotypic assumptions. Black community spokespersons allege that decisions with respect to bail applications by minority applicants and their sponsors are all influenced by these negative factors. It is alleged that obtaining bail is far easier for Whites than Blacks and that the amount of bail money required is also higher for Blacks. In one interesting interview, a Black Justice of the Peace discussed some of these observations. He noted that just prior to his appointment he was 'apprenticed' to a mainstream White Justice of the Peace who had been in the system for many years. They worked together for several months.:

"we worked together pretty well and he was a fine teacher. One day, we were having lunch and he told me that I was the first Black person he had ever worked with ... he learned a lot from me, he said because before he got to know me, he always thought that all Blacks were no goods and now he knows better and is more careful. 'I don't automatically assume they are all criminals now'. Well I taught him something too!"



Justices of the Peace are also, in some cases, the first point of contact with the system. A community lawyer working primarily with Spanish speaking immigrants related the following experience.

"Just to give you an example of how stereotypic and racist they [JP's] can be, I attended the office of the Justice of the Peace with one of my clients and her young child. She had been assaulted by her husband and wanted to lay charges against him. The JP refused to accept the charges despite the fact that the client had lost her front teeth. He also insisted on calling her child 'Jose' as this was the stereotypic name for Spanish males in his mind. I returned to the office of the Justice of the Peace again, later in the year to lay an charge against an employer. I saw the same Justice of the Peace who had refused to deal with us earlier. My client again was Spanish speaking. Need I say more"?



#### 4-5 Perceptions of Other Court Staff

Most respondents had few specific comments to make about court room staff such as stenographers, recorders and legal clerks. The administrative staff such as counter clerks were also not especially singled out for comment. They are, of course, cited as another example of the lack of representation in the system as a whole.





## 5 - THE CRIMINAL JUSTICE SYSTEM: DIFFERENTIAL TREATMENT

So far the ways in which courtroom personnel are perceived have been described. <sup>1</sup> (see endnote 1 which contains additional survey data)

In this section, the respondent's views about what actually happens in the court are described. Four main issues were singled out: Jury Selection, Convictions, Sentencing, and Pleas.

### 5-1 Jury Selection

What is the definition of 'one's peers' in the case of a racial minority defendant and an all White jury? Rarely are members of racial minorities themselves jury members. Current methods of jury selection in which enumeration lists are used to obtain names will in the first place reflect the small numbers of racial minorities relative to the much larger voting public. Moreover, some immigrants will not have qualified to be on the rolls. Potential jurors can also be granted discharge from jury duty for medical, job related and other factors. Many immigrants, even those here for some periods of time, do not have job security and are either unable or unwilling to serve as jurors. Further reductions from among the list of potential jurors provided to the courts are made by both the Crown Attorneys and the lawyers acting for the defence. As a result of these and other complex factors, very few members



of minority groups serve as jurors.<sup>10</sup> Given these constraints in the system, both defence and Crown Attorneys should try to accept as jurors those who are at least knowledgeable about and sensitive to the special problems of minority group people. The process of jury selection as it now stands means that people from racial minority groups and especially those of Asian, Caribbean, African or other non-white origins are not tried by a 'Jury of their Peers'.

Moreover, as noted above, when defence lawyers have attempted to question potential jurors for cause on racism and prejudice in an attempt to redress some of these inequities in the jury selection process, the majority of judges to whom this issue has been addressed have not allowed this request.

#### 5-2 Convictions:

There is a widespread belief that minority persons are convicted more frequently than White offenders when charged with the same criminal offence. Although a quantitative study of conviction rates comparing minorities and non-minorities has, to our knowledge, not been carried out in Ontario, there is a strongly held belief both among community members as well as special groups

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<sup>10</sup>. Of the few eventually chosen, even fewer serve at the trials of minority accused.



such as minority lawyers that Blacks and others are convicted more often. <sup>11</sup>

In line with this belief is the perception that the common 'Black' crimes are pimping, drug charges, theft, break and enters and assault. Crimes such as arson, extortion, fraud, bad checks, and the like are rarely committed by Blacks. Stereotypic and unproven assumptions about other crimes committed by racial minority groups include the belief that South Asians are prone to violence and most often charged and/or convicted of domestic assault. Sikhs are especially perceived to be violent and charges of assault are expected.

Since these are considered to be 'Black crimes' or 'Sikh crimes', it follows that whenever a Black or a Sikh defendant is charged with any of these crimes, the perception is that automatic conviction will follow.

These perceptions are particularly acute in the Black community and amongst those who work most closely with Black accused. It is almost never the case that a man is merely a 'friend' of a prostitute. If a Black man is friendly with a prostitute, either Black or White, the perception is that he will automatically be

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<sup>11</sup>. In this section, the perceptions of the Black community is most often reported. Other racial minorities agree however, that many of the allegations made by Blacks apply equally to them.





found guilty of pimping.( On the other hand, it was also noted, that White prostitutes, or even White women who were not prostitutes who consort with Black men are also automatically devalued. Their testimony and evidence are not accorded the same attention and significance as others). Thus, ' Black crimes' are made more significant when a White woman is involved. If there are any sexual overtones to a charge, a conviction as well as a harsh sentence can automatically be expected to follow.

Another common perception relates to the granting of conditional discharges. As one respondent put it: "99% of Judges do not give conditional discharges to Blacks".

In one such case, a young Black man was charged with breaking a shop window and stealing a radio valued at \$8. The youth was also employed in a job in which he was doing well. The misdemeanour occurred when he and some friends had too much to drink and decided to 'skylark'. By the time his trial came up, he had made restitution. On the advice of his lawyer who believed that his client had all the elements for compassionate treatment, he made a plea of guilty expecting a conditional discharge. Despite the fact that this was a first offence, and that restitution had been made, the Judge dismissed the request for discharge and said that a prison term was in order. When the lawyer suggested 14 days so that the youth could keep his job, the judge ordered a conviction



of 90 days. He had no regard for the negative effects of this conviction and jail term on the youth's future life and it was felt that the harshness of the sentence was based on the colour of the accused, and not on the severity of the crime.

Most respondents believed that White offenders are given conditional discharges and placed on probation far more frequently than are Blacks. This is particularly true for Black youths. As one respondent succinctly put it: "if you're Black, you go to jail!".

Another very serious allegation made against judges is that at preliminary hearings of Black and minority defendants, defence counsel will recommend bail but the Judges will not grant it. This is believed to happen significantly more often for Blacks than for Whites. The amount of bail money required is, in theory related to the severity of the charges. It is alleged, however, that in many instances bail is denied because "Blacks are seen as a danger to society". It is further suggested that some judges and Justices of the Peace use the argument that most Blacks can't raise the money as a rationalization for not granting bail in the first instance.



### 5-3 Sentencing

Another commonly held belief in the minority communities, and substantiated by lawyers, is that Blacks and other minorities are not only charged and convicted more often, but they are also given longer and harsher sentences for the same offences.

In one case, a young white women was given 30 days for shoplifting whereas a Black woman, convicted on the same day by the same judge was given 90 days for the same offence and both were first offenders. In another case involving fraud, a group of Black youths received the maximum sentence of 6 months whereas in a very similar case, two months earlier, a white youth received 90 days. In another instance, five youths, three Whites and two Blacks were charged with possession of marijuana. The three Whites were charged fines of \$40 per joint whereas the two Black youths were sent to jail for three days.

In a famous case involving Black defendants, four men were given maximum sentences for maiming whereas in the same week, three White youths received a lesser sentence for the more serious charge of murder. In another case, an attempted homicide conviction was appealed successfully





and the charge reduced to robbery but the original sentence remained the same. <sup>12</sup>

In some instances the justification for harsher sentences is, according to a White mainstream lawyer whose firm has many Black clients, "the ultimate irony". In discussing drug sweeps in subsidized housing areas, he says:

"judges say they have to protect the people who live in housing projects which means you maintain the status quo which in turn maintains the housing projects, which maintain the poor, the indigent, and especially Blacks. A judge says:

'you're getting 18 month in jail because its people like you who are making these housing projects horrible places to live'

That's completely the wrong way around! Because these housing projects are horrible places to live in, you're poor, you live in a housing project, you get involved with crack, you go to jail. There is no attempt to help these people at all. That's why the courts are clogged up"

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<sup>12</sup>. Almost every respondent interviewed was able to cite one or more cases in which harsher sentencing between Whites and Blacks took place. "Sentence Inequality" as one person put it, occurs regularly!



#### 5-4 Guilty Pleas

The concern around the nature of guilty pleas is closely related to the inadequate legal representation offered to minority clients. (discussed in more detail below.) It sometimes happens that as the hearing or case begins, duty counsel will advise the defendant to plead guilty to so that a defendant can 'get out and get it over with' as quickly as possible. One respondent, head of a Black community organization gave the following example:

"I question how public defenders really defend their clients. I witnessed somebody brought in for attempted assault. They have a public defender who says "listen, I want to get you in and out of here fast, what we should do is plead guilty. Later I asked the guy, "why are you pleading guilty, did you do this, ' no, a couple of us got into a verbal argument, I pushed a guy, he pushed me, before you know it, the police came and charged me.' So you're not guilty, so why are you pleading guilty? The public defender says to them, plead guilty so we can get this over with. People involved don't realize that as soon as they plead guilty, they have a conviction against them and they have a record."

This story, and many more like it, reinforces the conclusion that many minority clients do not know much about the law. In this case, and others like it, the defendant did not realize that a criminal record would be the result of his guilty plea.

Another area where the implications of pleading guilty are not always made known to the defendant relates to his/her immigration status. If a person is not a citizen, conviction may lead to



deportation. Clients in this position are not always made aware of the potential hazard to agreeing to a quick plea of guilty.

Related to the question of pleas as well as to concerns about legal representation is the issue of 'dead time', that is, the amount of time the accused has already served prior to trial. Many knowledgeable persons thought that Blacks did far more 'dead time' than Whites. If the accused entered a plea of guilty, the argument goes, the amount of 'dead time' would be reduced because the case would proceed through the system more quickly. Defence lawyers also try to reduce charges or reduce jail time by referring to the amount of 'dead time' a defendant has already 'served'. In any event, however, this issue really underscores the differential treatment which Blacks receive within the system as compared to Whites.





## 6 - ISSUES RELATING TO LEGAL DEFENCE

Many respondents spoke passionately about the problems involved in legal defence. The most common issues raised had to do with the inadequacy of legal defence for minority clients. Specific questions related to the role of the duty counsel; the Legal Aid system; the retention of White as opposed to minority group lawyers; the small numbers of minority lawyers.

### 6-1 The Duty Counsel

Duty counsel are often junior members of the profession. Their role is to advise defendants about legal procedures and provide information on how to obtain legal counsel. Often, duty counsel are overworked and under stress. They may know little about the details of a case and their advice is therefore superficial. For the most part, they advise people to go to the Legal Aid office and try to engage a private lawyer by means of a Legal Aid certificate.



In one case, a twenty year old South Asian man, charged with using threatening language appeared in court entirely alone. The judge ascertained that he did not have counsel; neither was he accompanied by parents or other close relatives. The judge requested that duty counsel provide the man with information about how to obtain a lawyer. As the man left the court room, the duty counsel quickly followed and in a whispered two minute conversation gave him the location of the Legal Aid office in the building.



## 6-2 - The Legal Aid System

For some minority clients, the Legal Aid system is difficult to access and equally difficult to comprehend. A client may be told by duty counsel to seek advice from Legal Aid as described in the earlier observation. The Legal Aid office, which is located in Old City Hall, is only open from 8 to 1 which means people involved in afternoon hearings must return again the following morning and miss another day of work.<sup>13</sup> They are not given any real information but are told by a secretary that they must fill out a form in order to see if they are eligible for Legal Aid assistance. The form asks for information about their financial status. The form is sent to the Legal Aid head office in that region and the client will be informed of the result. This may take a considerable period of time. After approval has been given, the client is given a list of lawyers willing to take Legal Aid clients but the onus of finding the lawyer is on the client. For non-English speaking clients, translation or interpretation service is not readily available. A person must usually bring along an

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<sup>13</sup>. Other offices are apparently open from 9-5 but even these hours create hardship for people who must take time from work. A woman who had applied to legal aid said:

"all the offices are opened between 9 and 5. Racial minority individuals on low incomes can't afford to take time off work to access these services. By the time work is finished, government offices are closed. In many cases, there is no other person who can take care of business for them because both spouses have to work to make ends meet."





English speaking friend or relative. Moreover, the form itself is available only in the English language creating severe hardship for non-English speaking clients but also for newcomers who have some knowledge of English but nevertheless do not feel secure enough in the language to fill out a printed form. The legal aid system therefore is not only cumbersome but does not cater to the special needs of minority clients. Some people also thought that too many personal questions are asked.

"In order to get Legal Aid, one must answer a lot of questions about one's personal life and this can be offensive to many individuals. One feels that one has lost their dignity by going to Legal Aid for help."

For people who come from cultural backgrounds in which a great many aspects of life remain personal and private, answering questions which are, or are perceived to be, personal in nature can be very disconcerting.

Neither front line Legal Aid staff nor administrative personnel have received any special training with respect to servicing minority clients from non - mainstream cultural and racial backgrounds. This is an important service delivery issue and one that could easily be addressed in the opinion of a number of community workers.

The Legal Aid system was also criticized by some community legal workers because it does not assist clients who are charged with



minor offences. Such offenders usually go into court without counsel and often find themselves convicted. Even a minor sentence for a minor conviction carries with it the stigma of 'having a record' and may impact on the future life chances of an individual. The inability to access Legal Aid for minor charges is particularly problematic for young persons.

There was also some discussion about the eligibility criteria as presently constructed by the Legal Aid Plan. Some people fail to meet these criteria because of intervening circumstances. For example:

"A young man got into some difficulty and applied for legal aid. He has to tell them about his finances which were very slim. His mother owned a house, had a job, and was doing well. His application was refused because of his mother's financial position but the man is not on speaking terms with his mother and does not live with her".

On a somewhat different level, the Legal Aid system was criticized because its fee structure does not differentiate between "fighting a case" in court and a "quick plea bargain". In either event, the fee is the same except that a plea bargain case will usually lead to a faster conclusion and as well, faster payment to the lawyer.



### 6-3 Finding and Retaining Lawyers: Majority Versus Minority Lawyers

Most ethnocultural and racial minority persons use word of mouth networks to find lawyers and seek other forms of legal advice. They consult friends, relatives and peers. The Legal Aid system is also frequently used to find lawyers since many members of these communities must obtain legal aid assistance.

Community legal clinics are used by those who live in areas where they are located. Legal Aid clinics, however, do not advise on matters relating to criminal law. Their mandate is restricted to landlord-tenant problems, immigration and civil law suits. Information and help is also received from social service and counselling agencies. A substantial number of people, however, appear to "fall through the cracks". For young people the problem of finding a lawyer is particularly onerous.

In the Black community, there appears to be an interesting division of opinion with respect to retaining a lawyer "from one's own group" or a White mainstream lawyer. There are supporters for each position.

The point is illustrated by a Black lawyer:





"I think that the main problem is really one of legal representation. Black people and other visible minorities are not being well defended. How can a white person who does not know you, who does not know your culture or your way of life or anything about you can defend you? As in the Donald Marshall case, the lawyers have not done their work. If you can be well defended, and I think that the justice system in Canada is really a good system, but you have to know how to convince the judges and if you can't do that, how can you defend your client?"

White lawyers who accept Legal Aid certificates are frequently and severely criticized. They appear not to care about visible minority clients and many of them appear to go through the motions of providing legal service. They do not give their clients enough information about the law, their rights and more specifically what to expect once in court. It was often mentioned that most Canadians are intimidated by the court system and the traditional rituals involved in the administration of British based justice. Racial minority persons facing an all White establishment will feel even more fearful. White lawyers do not adequately prepare their clients to face the experience in the courtroom. As one Black youth in describing his lawyer comments, "all he said was, get a hair cut and wear clean clothes!"

Another criticism noted was that White lawyers do not necessarily understand their client's language even when they are English speaking. A client from rural Jamaica for example may speak in patois (non-standard English) which an English speaking lawyer may not readily understand. Sometimes a client will use words known



and understood by the lawyer but the affective context and the underlying meanings of the communication are unclear. In the same manner, the cultural values and experiences of such clients are unknown and little understood by their lawyers. Moreover, there is a belief that White lawyers also believe in the stereotype of Black criminality.

White lawyers are also criticized for their overuse of plea bargaining.<sup>14</sup> As noted earlier, convincing the defendant to plead guilty is a common practice and along with it, the lawyer strikes a bargain with the Crown so that the defendant will get off quickly and easily. Another facet of this complaint is that a White lawyer will use the strategy of plea bargaining and have the client plead guilty to a lesser charge particularly when the original charge is a fairly serious one. The client, not realizing that there is a chance that the original more serious charge will be dismissed, agrees to pleading guilty to a lesser charge and ends up with a conviction and a record.

There are other implications of plea bargaining and its effect on minority clients. A White lawyer will often convince a client to

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<sup>14</sup>. The majority of racial minorities are defended by White lawyers mainly because there are relatively few racial minority lawyers and, as well, most community members prefer to engage White, mainstream lawyers. Moreover, community respondents believe that White lawyers use plea bargaining more often than racial minority lawyers but this perception might be an artifact of the unequal numbers of White and minority lawyers.



plead guilty as charged or to a lesser charge because it will reduce the amount of 'dead time' the client must serve. It is alleged that Black defendants are denied bail more frequently which means that they spend up to a year or more in jail pending trial. A White lawyer working on a certificate will argue that the amount of such dead time can be reduced altogether by pleading guilty and either being discharged or being convicted and actually serving the prison term as sentenced. [Blacks do considerably more dead time than whites.]

Another important implication of the process of plea bargaining, which, it is alleged, is done far more frequently by White lawyers when they deal with racial minority clients, is that a client will be convinced to plead guilty by a lawyer saying: "we'll get sentenced right away, no need to do dead time, you'll be home by tonight...". In the meantime, the individual has been convicted. As noted earlier, a conviction of six or more months can lead to deportation for immigrants. Sometimes, the plea bargaining lawyer does not inform his/her minority clients of this possibility. In any event, immigration authorities are notified when persons holding landed immigrant status are convicted and sent to prison.

Moreover, a Legal Aid lawyer who has convinced his client to plea bargain stands to receive immediate payment as opposed to a long drawn out court battle when fees will be paid at a later point.







Many minority people are convinced that a White lawyer will offer them the best possible chance in the courtroom. Some people argue White lawyers trained in the system will automatically know the system whereas a minority lawyer, especially those trained elsewhere, will not know the system as well. The most important aspect of this view is that White lawyers are part of the power structure and therefore in a better position to give effective legal service to minority clients.

Moreover, there is the perception that Black lawyers are abused by the system, that they are not accorded the respect given to their white colleagues, and that judges discriminate in favour of White lawyers. Minorities believe that Black lawyers will not benefit from the judges discretion and that judges will not accede to the demands of the Black lawyer to the extent that he/she would to a White lawyer. A Black lawyer noted:

"a White lawyer can get away with a lot. I've seen white lawyers making fools of themselves; Black lawyers can't get away with anything".

Black lawyers are appearing less frequently in the courtroom as a result of the abuse and discrimination they feel they have been subjected to by the system. One well known Black criminal lawyer has ceased the practice of criminal law entirely for this reason and others are decreasing their criminal practice. Moreover, there



is the feeling among some White lawyers, particularly those who have a large Black and minority clientele that because Black and other racial minority lawyers they are so few in number, they become self conscious in court and aim to please. They want to be liked and respected and will therefore not take risks for their clients.

There is also an interesting, although stereotypic belief held by some members of the Black community that their interests are better served by White and Jewish lawyers and not by racial minority lawyers who they perceive as having less credibility in court and fewer "connections".

On the other hand, there is also the belief subscribed to by some minority people that only a member of one's own cultural or racial group can provide good legal service because their lawyers understand the value system and cultural backgrounds of their clients.

In other racial minority communities, these differences of opinion with respect to legal representation are not as clearly articulated. The obvious exception are the Aboriginal groups who feel that the issue is almost academic for them since there are so few Aboriginal lawyers and, in any case, they would prefer to have their own legal systems. (see below)



#### 6-4 Employment Equity Issues in the Legal Profession

Issues related to employment equity are of great concern especially to minority members of the legal profession. Traditionally, the numbers of minority students enrolled in the law schools has been very small. The numbers have increased somewhat in recent years. Access to law school was extremely difficult for minority students, relatively few applied, and even fewer were accepted. The result has been that the overall number of minority lawyers is low relative to the total number of lawyers practising in Ontario. There are said to be only about 100 minority group lawyers of whom less than 25 practice criminal law; the majority are in immigration law.<sup>15</sup> In some communities such as the Chinese and South Asian, most lawyers work within large scale corporations. The Vietnamese community is thought to have only one lawyer. There are only a very few Aboriginal lawyers. (An Aboriginal association spokesperson wrote next to the question on the survey comparing legal defence by White and non-white lawyers: "We have never had the chance to be defended by Aboriginal counsel"!)

Minority Lawyers complain that for many years, articling opportunities, especially in the larger more prestigious firms were non-existent. Similarly, minority lawyers are not hired by the

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<sup>15</sup>. Neither these numbers nor the allegations directed towards law schools and firms have been verified. These comments (as well as most others in this report) reflect the perceptions of racial minority communities.







large firms. Many minority lawyers practise out of one or two person offices.

Given the lack of training and employment opportunities, it is not surprising that very few minority lawyers are engaged as Crown Attorneys. There are said to be only about six members of racial minorities currently working as Crown counsels. This lack of representation is especially apparent at the level of the judiciary where, it is maintained, there are only three visible minority judges in the province.



Question 16 on the survey questionnaire asked respondents to indicate agreement or disagreement on a scale of 1-5 on many of the court issues described above. The results of that question are in Table I.

Table I - "Is there a Belief among Racial Minority People that:

5-4 - believed strongly/moderately  
 3 - believed somewhat  
 2 - not believed  
 1 - don't know

	<u>5-4</u>	<u>3</u>	<u>2</u>	<u>1</u>
a) when they are charged with criminal offenses such as rape, homicide, or robbery, they are treated unfairly?	17	8	5	12
b) racial minorities receive harsher sentences than others convicted of the same crime?	19	8	4	10
c) they are charged more often	20	8	4	10
d) they are treated differently in the courts?	20	8	4	8
e) they stand a better chance if defended by a White lawyer?	15	10	2	15
f) court room personnel are insensitive to racial minorities	19	7	5	11
g) a White lawyer can better represent a case compared to a lawyer from their own minority group?	10	8	8	14
h) visible minority lawyers are themselves discriminated in court?	13	8	5	14

Total number of respondents who answered this question = 42  
 (items g and h were answered by 40)  
 (Total number of respondents who returned questionnaire = 50)

societies. In most Caribbean countries, children "get licks" [spanked] and even the children expect this form of punishment.

One of the major complaints made by community legal workers is related to the incidents of domestic violence in largely immigrant, and sometimes, racial minority communities. At issue here is the fact that many such cases seem to find their way into the family law courts. This, in turn, appears to be generating and reinforcing the stereotype that "such people are prone to violence; they spend their time beating up their wives". What is forgotten in this facile stereotype is that domestic violence is not confined to the immigrant communities. (Moreover, the stresses and strains of immigrating to a new and unfamiliar country play a major role in generating family tensions. This is especially true for men who often experience racial and cultural barriers in their attempts to find employment commensurate with their skills and abilities. While this argument does not justify spousal assault, it may help to explain why some of these frustrations may well be reflected in incidents of domestic violence.)

When women lay charges of domestic assault against their husbands, "the Crown Attorney is your lawyer" as one woman put it and many of them are not sympathetic to the victim. This lack of sympathy is exacerbated when the victim and her assailant are members of immigrant, ethnocultural or racial minority groups. In addition, the Crown Attorneys, as noted earlier, are perceived to have an



overly close relationship with the police which victims see as detrimental to their cases. Women from non-English speaking communities often cannot make their case alone and must rely heavily on a staff member from a community legal clinic or from community groups who supply support services to battered women. They report that the Crown Attorney's most active intervention is to ask the woman what kind of sentence she would prefer. In cases where the husband is employed and does provide financial support to the family, women prefer sentences which can be served on weekends so that employment is not interrupted.

Here too, the criticism was made that the Crowns often receive these cases on the very morning that they are scheduled in court and have not had time to prepare.







## 7 - THE FAMILY COURTS:

In the Family court, the important issue of minority representation was also seen as a barrier to equitable service delivery, as indeed it was, for all the courts in the system. The family courts were, however, singled out specifically with regard to cultural barriers. The problems which bring minority clients to the family court relate to issues such as domestic violence, care and custody of children, divorce and the implications of family breakdown. For racial and ethnocultural minorities, and especially the more recently arrived immigrants, 'going to court' can become a confusing and unnerving experience. This is often manifested by an inability to trust the system. For example, a man of South East Asian origin, related his experiences in trying to win custody of his children:

He had been in Canada for 14 years. Both the social worker in the case as well as his lawyer supported his claim for custody. When he got into the court room situation he found that he was unable to speak "freely and frankly" on the witness stand. Neither his White family worker or his White lawyer could persuade him to place his trust in the system; and, as a result, he lost his case.



## 7-1 Different Forms of Family Organization

Members of racial minority groups who come from the Caribbean, South Asia, South East Asia, Africa and Central and South American societies bring a variety of different forms of family organization with them. Problems with respect to cross cultural differences can seriously impact on the effectiveness of service delivery for both the system and its clients.

For example, because of the many historical and economic forces which have shaped Caribbean societies, significant numbers of men and women live together in many different types of consensual unions without undergoing either civil or religious marriage. Their offspring are, legally 'illegitimate' although some Caribbean countries have, in recent years, changed what are now considered to be antiquated colonial laws.

Moreover, the family may consist of grandparents, grandchildren, and other kin and is a larger unit than the nuclear family characteristic of mainstream Canadian families. Authority and decision making patterns within the family, relationships between men and women, between parents and children reflect the particular cultural realities of the Caribbean.

As these family dynamics are played out in a court of law in a country such as Canada, these cultural realities assume critical





dimensions. In the first instance, most members of the legal system are unfamiliar with the cultural patterns of their clients. As well as their judgements are influenced by their own Canadian cultural values and norms. For example, a father claimed custody of his two children:

"I went to the court and my lawyer knew about my situation but the judge didn't listen to him or to me. I want my children because the mother can't take care of them - 'she too skittish' but the judge say the place of the children is with the mother and because she and me are not married, I had no proof that I was their father..."

Moreover, these culturally proscribed forms of relationships which do not always include legal marriage are negatively perceived by members of the Canadian legal system.

The legal implications of these and other forms of family organization include not only relationship and child custody factors but they also affect such important issues as inheritance rights, property ownership and settlements.

In South Asian families, the cultural traditions with respect to both civil and religious marriage include strong rules of patriarchy. Men therefore play a powerful role in both public and domestic arenas. A number of important legal implications flow from this type of family organization. Inheritance rules will, for example, almost always favour male offspring.



Immigrants from other areas of the world also have forms of family organization which are unique to them and may differ substantially from those most familiar to Canadian members of the justice system.

In a well known case, a Vietnamese father was charged and convicted of child abuse. During the course of medical examination of his sick child, large, round, red bruises had been discovered on the child's body. As a result of grief and humiliation the father hung himself on the second or third day of his incarceration. Further investigation showed that the bruises on the child's body were caused by the pressure of round objects thought to have healing properties. This treatment was a type of natural folk medicine practised in his culture.

Black community spokespersons believed that custody cases were especially problematic. It was thought that standards in the court were "somehow adjusted" when applied to Black families. There is a greater tendency to take Black children away from their parents by the Children's Aid Society and once in court, "the case is stacked against Black parents". The parents appear to lose their rights quickly because their methods of parenting are poorly understood by members of the legal system. As in the Vietnamese case cited earlier, Black parents are accused of child abuse whereas, in fact, the use of moderate physical punishment, as opposed to 'child abuse' is normal and accepted in their original



7-2 - Service Related Issues: Office of the Official Guardian <sup>16</sup>

The Office of the Official Guardian, for those who knew anything about it, received a considerable amount of praise. On the whole, some knowledgeable members of the community said that it had made some serious attempts to become sensitive to cross cultural issues insofar as they affect the delivery of its service. One minority lawyer noted specifically that "I don't think there is an equal to it anywhere in the country". A Black spokesperson agreed that the Official Guardian had gone to considerable lengths to obtain information on Black families. <sup>17</sup>

On the other hand, the office received some specific criticism. The main concern was that the cross cultural sensitivity training which some members of the office had received during lunch time sessions was not extensive enough, and did not reach all members of the system. It was also thought that some of the information collected by the office about various forms of family organization was not used intensively enough to inform policy and decision

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<sup>16</sup>. Of 40 responses to this question in the survey, only 14 said that they had contact with this office and these were primarily the service delivery organizations

<sup>17</sup>. One of the major concerns for all of the communities was the lack of minority representation in the legal and justice system. Perhaps one of the major reasons for the collection of information on Black and other minority families is related to the fact that a Black lawyer occupied the position of Official Guardian for many years.







making. Another major area of comment focused on the relationship of the Official Guardian and the Children's Aid Society. Since there has been some controversy about CAS on matters of concern to these communities, (and particularly the Aboriginal communities discussed below), it was felt that the Official Guardian should "not be hat in hand with the Children's Aid Society" and act with more independence. It was also noted that a major constraint to effective and sensitive service was that the Official Guardian does not meet with clients directly but obtains the necessary information from the Children's Aid Society.

#### 7-3 Other Service Related Issues - The Support and Custody Order Enforcement Office <sup>18</sup>

This office is used fairly frequently by racial minority women, particularly those who live in areas where the services of community legal clinics are available.

The problems encountered in service delivery fall into two categories. Firstly, there is again the familiar criticism that the personnel do not reflect the diversity in the population.

Second, some culturally specific criticisms were also made.

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<sup>18</sup>. Of 40 respondents who answered this question, 16 had had some contact with this office. Again, many of these were the from service delivery organizations.



It was thought, for example, that when Black men are charged with lack of support or failing to pay support charges, the system "comes down much harder on him than on a White father". This is particularly the case in interracial marriages or unions between Black men and White women. (As noted earlier with respect to criminal cases, situations involving sexual behaviour between the races, are dealt with much more harshly.)

Specific service delivery concerns related to difficulties in accessing the service, finding information and the complexity of the forms used by SCOE. While the forms have recently been simplified, there were some strongly expressed views about the difficulties in answering the questions and especially about the language used in the forms. Minority women will, in most cases, require some help in completing the forms. Even when help can be provided by staff, the client must still locate some very complex information about the financial status of a number of people. These forms are also only available in English and it is up to the client to find help for translation.

Even after a support and custody order is obtained, the problems of enforcement create hardship for many women as in the following example:

"I have to go to court time and time again for custody payment. I couldn't afford to leave my job that often to go to court to get custody payments enforced. I wasn't making



much [money] at the time. And for all my visits and time off work to go to court, I got nothing. If I went to apply for Welfare the first thing they would tell me is to get the support payments".

#### 7-4 Other Services: Office of the Public Trustee and the Victim Witness Program

Both of these services were largely unfamiliar to the respondents in this consultation with the exception of lawyers and community legal and paralegal workers. Only 11 respondents to the survey knew about or had contact with the Public Trustee and slightly more, 13 had some contact with the Victim Witness program. The areas of responsibility managed by the Public Trustee are probably not yet relevant to the major needs and concerns of minority group communities. (Most racial minorities are immigrants who have been in Canada for less than twenty years. Relatively few would be in the position of requiring the state to look after their financial affairs in the event of their incompetence. In most instances, members of the families would be available to perform this function.)

The Victim Witness program, on the other hand, has considerable potential importance to these communities and especially minority women. It appears, however to be too new to have had an impact. One Aboriginal organization in the northern part of the Province in answer to the questionnaire, wrote that it had attempted to





access information about the program for almost two years. They had apparently wanted to begin a program in their community but had been constrained by lack of information.



7-5 - Other Issues: Ontario Human Rights Commission Boards of Inquiry; The Unemployment Commission, Welfare Fraud, Immigration, Landlord Tenant Disputes

a) Ontario Human Rights Commission Boards of Inquiry

A Board of Inquiry may be established by the Ontario Human Rights Commission in its investigations of cases of alleged discrimination. The lawyers appearing for the Commission at this stage of an investigation are from the Crown Law Office - Civil of the Ministry of the Attorney General or they may be lawyers employed directly by the Commission. Several members of the community, including three lawyers, one law student and a community para legal worker specifically raised criticisms about these lawyers who are thought to be Crown Attorneys. Their comments were made in the context of discussion about the role and function of Crown Attorneys. There is, therefore, a mistaken notion among some key members of the community, themselves involved in legal matters, that these lawyers are part of the Ministry's cadre of Crown Attorneys.

Amongst the criticisms noted, Commission counsel were thought to be busy and often overworked. When they are assigned to an OHRC case, usually only on that very morning it was alleged, they have not had time to study and adequately prepare the case for presentation. Often enough, witnesses for the Commission are



inadequately prepared for cross examination because Commission counsel staff have had too little time to devote to the case.

More specifically, however, some Commission counsel do not understand the dynamics of racism themselves and are thus unable to adequately present the case for racial discrimination. Victims of racial discrimination who have gone through the complex and time consuming procedures of the Human Rights Commission sometimes find themselves in court listening to White Commission counsel presenting their case without any real sensitivity to the issue of racial discrimination. This can be most disconcerting.

In one such case, for example, the Commission counsel was asked for his definition of a 'visible minority' and his reply was "one who doesn't look Canadian"!.

In addition, Commission counsel in these cases are criticized because they are alleged to cancel hearing times too frequently. The community perception is that if a hearing needs to be adjourned or postponed because of time pressure, the Human Rights case involving charges of racism "will be the first to go"!.

This means that these hearings "often go on forever" and the effect on the victims is that they and their concerns are made to feel unimportant.





#### b) The Unemployment Insurance Commission

Although this is a federal statute prosecuted by Federal Crowns, several persons mentioned this issue with concern. Charges of defrauding the Unemployment Insurance Commission are laid by the Unemployment Insurance Commission after an investigation of the case. In recent years, it was alleged by several community respondents, that the Commission is laying charges against racial minority clients far more frequently than against Whites. As one community paralegal worker who specializes in employment related cases noted, "in cases involving unemployment fraud, the only White people in the court are the lawyers"!

#### c) Welfare Fraud

Similar allegations have been made about cases of Welfare fraud. There is also a common perception that the majority of welfare fraud cases now involve racial minority clients.

#### d) Immigration

Racial minority and other ethnocultural groups, particularly those from South and South East Asia and the Caribbean, have extensive contact with the Provincial Courts although immigration issues are under Federal jurisdiction. Immigration appeals, attempts to sponsor family members, and the disposition of illegal immigrants



appear to be the main concerns. In addition, the increasing number of refugees who come to Canada has led to the creation of a new two-tiered system of evaluating refugee claims. Immigration and refugee issues are extremely complex. The time and resources allotted to this consultation did not allow for an indepth analysis to be undertaken. In very general terms, however, the main criticisms of the entire legal system, inadequate racial minority representation and, for many groups, cultural barriers relating to language also apply to the areas of immigration and refugee status.

#### e) Landlord Tenant Disputes

As above, time did not allow for intensive examination of this issue.



## 8 - THE RACIAL MINORITY COMMUNITIES: MAJOR ISSUES OF CONCERN

### 8-1 The Black Community <sup>19</sup>

Much has already been said about the Black Community in earlier sections of this report. In summary, this 'group' is one of the most important of those served by the Ministry of the Attorney General because of its extensive contact with the criminal justice system.<sup>20</sup> As noted earlier, however, these relatively large numbers of Blacks in the criminal justice system are the result of the forces of racial discrimination in the institutions of society and probably offer convincing evidence for inadequate service delivery defined in its broadest terms. The crucial role of the police was particularly stressed.

One group of particular importance is the youth in the Black communities. The concern here is that the problems already identified in this community will magnify in this and future generations. There are fears and anxieties about the possibility

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<sup>19</sup>. Caribbean and other Black ethnocultural and service organizations were consulted in Toronto, Ottawa, Windsor and Thunder Bay.

<sup>20</sup>. 'The Black community' has been described as though it were one comprehensive community. Time constraints did not allow for a more extensive examination of the many different groups, based on countries of origin, which constitute the community in Ontario. In addition, there are substantial numbers of Blacks who are 'native' to this province as well as a smaller group of interprovincial migrants from Nova Scotia.





of riots and demonstrations similar to those which have occurred in the United States and especially in England. This concern was most vividly expressed by a Black community worker who said:

"The bottom line message to the Attorney General's office is that by 2010, there will be 12 million people in Metro alone. The majority will be from Third World countries, visible minorities. If the A-G's office doesn't get hip to this fact and provide leadership in that direction, we will see our own Brixton's, Notting Hills and Watts and maybe then we'll learn the hard way."

### 8-2 Black Youth: The New Generation

The perceptions of Black youth, especially those who come from relatively poor backgrounds and have either themselves had contact with the legal system or whose friends, peers or relatives have experienced such difficulties, are particularly disturbing. Their very negative and cynical perceptions are shared by older, mature members of the Black community. One community worker noted that:

"Young offenders are not treated like people; they are treated like a sack of rotten potatoes. Many of the people who make the decisions for these young people and their families are only 'book people'. They need better training. Some are too insensitive and rude and tend to use their experiences as a basis to treat others."

Others noted that Black youth are often charged and accused of crimes they did not commit. Identities are not carefully checked and the police may arrest youths who, they say, resemble someone they are searching for in connection with a crime committed.



Blacks allege that to White police officers 'all Blacks look alike' and this is especially true for younger members of the community who are more vulnerable and easily harassed. While many Black adults and youths themselves have some understanding of the actions of the police they are totally confused, alienated and frightened by the actions of the court system. As a Black social worker put it:

"Many of the clients we serve with legal matters suffer from culture shock and feel cheated by the system. Many Blacks were brought up to respect and trust the police. When a crime is committed they understand the role of the police, but they do not understand why the system works against them and their families, often labelling youths as problematic and coercing the child to accept a crime s/he did not commit. This, ethnic people find a total breach of trust."

Another significant problem discussed at length is the cynicism of Black youth. Those born and raised in Canada or who came as young children have already learned to be cynical about what to expect from Canadian society:

"What the system says to young Black kids on the streets is that 'you're going to pick up a criminal record at some point, c'est la vie, that's life'



In a similar vein, a White community lawyer who has had extensive experience with Black youth said:

"There is no chance for them to be seen as individual human beings. You're a Black kid who will be treated like all Black kids, which is doing drugs, bad attitude, broken homes... all that goes through a Crown Attorney's mind, any one, even the best. It creates despair and cynicism in young people. That's what I hate - the cynicism in young people who stand there knowing they are not going to get justice...."

The feelings and perceptions of Black youth can perhaps best be described in their own words. The following section is an almost verbatim transcription of a focus group discussion held with three young Blacks, all 18 years of age. One lives in Regents Park and the other two now live in Scarborough. The discussion was facilitated by a Black University student who was himself very familiar with life as it is lived on the streets.





There is so much frustration, so much lack of understanding of the process. If you have a legal aid lawyer, you sit there real quiet, you have no control, you trust nobody. You just met the lawyer in a holding cell downstairs, there is a lot of court jargon.

(Lawyers) Legal Aid lawyers have a huge case load, but you have no money

you're putting your trust into somebody you don't know.

Jim Smith - he had a legal aid case and lost; the next case he had, he paid \$3.000 and won.

You can get a lawyer through legal service clinic - they do alot of family and immigration but no criminal law and that's what a lot of minorities need.

The underlying thing is money, if you have money, you get off and if you have no money and are coloured, you lose.

But its mainly the frustration - the lack of understanding of how the courts work; you go from the police car, into the jail, through the court and if you're lucky, you walk out, if not you go back into the jail. Its like an assembly line, a factory. In jail, they house you, feed you, you have nothing to do, you go back in front of the judge for another detention hearing, its a very complicated system and its so overloaded too.

The issue of Black people getting stiffer sentences - yes absolutely, - here is the scenario - a White person and a Black person are raised in the same area, go to the same school, at 18 they both get charged with the same crime, who is going to get more time?

(bail) - a detention order is imposed, which means you can't get bail. Usually there is only one bail hearing, the detention order is usually removed by the second court appearance. But here again, bail, detention order - these are things the young people don't understand, have to get explained really quickly.

A lot of times, you get turned down for bail,- there's this guy with an earring in his ear, no suit and tie, and a rasta hat, (Rastafarian) would he get bail?

But a lot of people get their information from 'jail house lawyers' - they have been through the system alot, doing alot of time, they'll tell you what to expect - 'what are you charged for? First offence, oh, then no problem, just go up there , plead not guilty... see what happens, after that its in the judges hands. They're all kinds of intense discussions in holding cells-in the



jails - about trials, judges, crowns, jail house lawyers.- they know the court system inside out - that's how alot of people get their information. A jail house lawyer will ask 'who is your lawyer'? oh, he's no good, get another lawyer.'

(barriers): police - there are reasons why they are there, and why they are in court, but in court - alot of men in Black robes - supposedly your peers, I've never seen a Black man on the bench. Young black kids go into court, all they see are White faces - those people can't understand where we're coming from, nor will they try to understand. That's the mentality. These are not my peers, so I don't have any respect for this court system - so they get out and get involved with crack again

The lack of education in the Black community is unreal. A sister or a friend will come to bail out somebody - the questions are:

Do you have a bank account?,           yes,  
Did you bring your bank book with you?,           no.  
So there is no proof that you have a bank account.  
Do you have a job?                           yes, I do,  
Do you have any pay check stubs or receipts to prove to us  
that you have the money and a job?           yes, I have a job but  
I didn't bring any proof.

(Dead time): they held me for 14 days - I wasn't convicted of anything but in their eyes the charges were so severe that they couldn't let me out on the street - I did 14 days. That time doesn't count.

If you plead guilty, you get a detention order, you have to prove your innocence. Detention orders and dead time means you are guilty until proven innocent rather than the other way around. Let say they arrest you for possession of cocaine, then they release you on bail next day, that night you get caught again on same charge, they will hold you until your trial for the first charge, all that time is dead time

Sometimes the lawyer will tell you to plead guilty and than ask for a reduced sentence because of the dead time. Sometimes the judge goes for it, sometimes not.





There is nothing you can do - remember the judge is not reading from the defence, he is reading the police charges and as far as the police are concerned, you're guilty.

Judge will listen to the police man - there is this ' natty man dread' [Rastafarian with dread locks - long hair] standing in front of him, who will he believe? Or a black man with hair on his face, or shifty eyes. Why are his eyes so shifty? Because he's scared shitless - he doesn't understand yea or nea - of course, his eyes are going to be shifty, he's nervous, he's upset. If you're in the dock, and you've been sleeping, you don't look clean, they won't give you any combs because they are afraid you'll stab somebody with a comb or poke out somebody's eye; nor a tooth brush because you can always sharpen the end of a tooth brush to stab somebody - so when you show up in front of a judge, you are extremely dishevelled, handcuffed, upset and then there is the clean respectable shiny policeman with pressed pants and shiny boots who says "perpetrator this, perpetrator that. The crown attorney - treated me like shit, rude, acted as if I weren't human.

I once got some information from duty counsel but he was a bad lawyer, next time I would get a good lawyer.

What's wrong with system?: they don't go by rights and laws. they go by who you are, rich or poor, Black or White, and how you live.





### 8-3 The South Asian Community <sup>21</sup>

The concerns in these groups mirror those expressed earlier by members of the Black Community. South Asians agree with the general systemic criticisms made throughout this report. Specific areas singled out by South Asians are:

- Cultural barriers which are expressed by:
  - . general unfamiliarity with Canadian ways and specifically with aspects of the law, legal and civil rights; court room procedures, and the like.
  - . in some cases, language barriers despite the fact that most South Asians are English speakers, they feel particularly vulnerable in crisis situations such as in a court of law and some therefore prefer translators.
  - . difficulty in making their unique forms of family organizations clear in their contacts with relevant offices of the Attorney General.
  - . being fearful and anxious about the legal system because of their experiences with punitive legal systems and governments in their countries of origin.

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<sup>21</sup>. Groups consulted included Indians, Pakistanis and Tamils in Toronto, and Ottawa



- . being perceived as arrogant and/or subservient. Many South Asians come from highly stratified societies. Status and position are extremely important dimensions of these cultural systems. The result is that some South Asians are thought to be arrogant when they relate to what they define as low status persons, e.g, counterstaff, and at the same time, overly subservient to authority figures such as lawyers, crown attorneys and judges,

Their specific needs include not only greater representation but more community outreach and public education with respect to the role of the Ministry and better translation and interpretation facilities. The Tamil community is particularly concerned that inaccurate translation has already had a negative impact in immigration hearings. In the court room, there is also concern about the inadequacy of translation and interpretation. This message was particularly sounded by a lawyer of South Asian origin who had himself heard inaccurate translations in his own mother tongue.

In another and very dramatic example of the barriers created by language the same lawyer explained that:



He had recently been engaged by a Hindi speaking client who said he had been charged with rape and was due to appear in court in a few days time. When the lawyer phoned for details of the case, he learned that his client had already been convicted of rape and that his next court appearance was for sentencing!

#### 8-4 - The South East Asian Community <sup>22</sup>

While this community, as others, is affected by a wide number of culturally specific issues which interfere with adequate service delivery, their overwhelming concern is with the barriers created by language.

In this section, therefore, some of the specific problems centring around language for this community and others will be highlighted.

Differences in language create probably the biggest barrier to service experienced by South East Asians. Language barriers almost always result in the fact that more time is needed to provide adequate service to a client. Lawyers in clinics and in the courts, cannot continue with a case unless the client understands what is being done and gives his/her consent and direction.

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<sup>22</sup>. Chinese, Korean, Filipino and Vietnamese groups in Toronto, Ottawa and Windsor were consulted.





Lawyers and paralegals must constantly repeat details over and over again particularly when working with members of ethnic groups such as Vietnamese, Laotians and others who have recently arrived in Canada. There are few interpreters and translators in these languages.

The same situation applies when a client is being prepared for a court appearance. It is widely believed, particularly in the South East Asian communities, that judges are impatient with interpreters and sometimes have unrealistic expectations of them.

"Judges do not seem to understand that it is very difficult to translate the emotional impact which someone is trying to express and that it takes time to find the right words. Many judges want instantaneous translation and that sometimes is not possible."

Many community members also feel that because a person has a basic understanding of the English language, they should not be denied the use of a translator in court. An example was given of a middle aged Chinese woman appearing as a witness who was asked how long she had been in the country. When she responded in English that it was more than 25 years, permission for a translator was denied.

The use of translators and interpreters also raises the question of their training and experience. Charges of inaccurate translations have surfaced in several cases. In one case, involving criminal charges, the accused got up and shouted in the court room that the translation was inaccurate. On the whole it



is believed that unqualified people apply for these jobs and they are hired simply because they know the foreign language. Their competency in neither that language or in English is tested.<sup>23</sup>

In the same way that the appearance of the accused will influence the outcome of a case, it was also suggested that the appearance of the interpreter will also influence a case. Both the interpreter and the accused are being assessed by the judge and a negative assessment of the interpreter can spill over to the defendant.

Some persons also noted that the courts should use the services of cultural interpreters more extensively.

A prominent lawyer of South East Asian heritage summarized the situation for the Chinese:

"In the Chinese community, our big problem is the language barrier. We don't get beyond that so we don't even know what exists in the system beyond that point. We're still struggling to get that basic recognition. The government is putting a lot of money in all kinds of programs, but somehow language barriers are not taken seriously. The reality has to be dealt with - and in Metro Toronto, many people do not speak English."

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<sup>23</sup>. Some testing in English and the foreign language, has recently been required by the Ministry. This also sparked criticisms, however, because allegedly respected translators with years of experience have failed the exam.



## 8-6 - The Aboriginal Communities

The Aboriginal community in the province, including Inuit, Metis, Status and Non-status Indian is 170,960 according to the census of 1986. Of these, the census lists 34,125 residing in Toronto but Aboriginal leaders feel that the census undercounted the community in the urban area. A more realistic estimate for Toronto is in the range of 40,000 persons. There are several legal service units currently available to Aboriginals both in the city of Toronto and elsewhere in the Province. Reports and interviews conclude that, on the whole, the Aboriginal communities in Toronto and throughout the Province are inadequately served by programs within the Attorney General's office. Moreover some of the same complaints with respect to the criminal justice system as noted above also apply to the Aboriginal communities. Programs geared towards Aboriginals and funded by other Ministries are also criticized. The Native court worker program is the major service funded by the Ministry of the Attorney General.

A recent report assessing the need for better legal services for Aboriginals in Toronto notes that:

"The needs of Native people related to the justice system are greater than the capacity of the current services to meet these needs.

Service delivery related to the justice system is very fragmented and uncoordinated.







The focus of current programs and services are not directly related to the needs" (Obansiwan Irwin Consultants, p. 60) <sup>24</sup>

It specifically recommends the establishment of a Native Legal Service Agency under the sponsorship of the Native Canadian Centre in Toronto.

This report as well as the interviews conducted for this project reveal that many of the same issues confronting other racial minority groups also apply to the Aboriginal community.

For example, this study reports that the rate of incarceration for Aboriginals is almost four times that of non-Aboriginals. Nearly 15% of all incarcerated Aboriginals are in Toronto jails and prisons; only Kenora has a higher rate of 19%. Another major problem for this community is the rate of recidivism and while statistics are not readily available on the numbers of Aboriginals who are sent to jails again and again, community spokespeople indicate that this is a major concern requiring additional counselling and support systems to contain.

Just as in the Black community, where the most common charge relates to drugs, alcohol related offences are the most frequent in the Aboriginal communities comprising 35% of all charges

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<sup>24</sup>. Native People and the Justice System in the Metropolitan Toronto Area. Sept. 1988



directed towards males and 50% of females charged and convicted.

The present consultation found that for racial minorities unequal or differential sentencing was an area of prime concern. This is also true for the Aboriginal communities where offenders are given prison sentences far more frequently than fines, probation and other sentencing alternatives. For example, 70.7% of offenders were given some form of imprisonment in Old City Hall Court in Toronto in 1987-88. Aboriginal leaders also maintain, as in the Black community, that Aboriginals are given harsher sentences as compared to non-Aboriginals for the same offences.

In issues relating to the family court, it was noted that there is a severe need for more culturally sensitive interventions and counselling services. A disproportionate number of aboriginals, particularly single parents and those in mixed marriages, are found in the family courts.

Aboriginal persons are said to be the most likely victims of the criminal justice system. This is in large part due to the systemic discriminatory patterns inherent within the criminal justice system and, as well, the allegedly passive manner in which many Aboriginals confront the system. A lawyer working with Aboriginal clients believes that Aboriginal people should be more aggressive in asserting their rights. Many Aboriginals are not aware of their legal rights and tend to take what is meted out by the



system. More and better legal education is required; as well there is a strong need for more advocacy for Aboriginal persons within the justice system. The systemic and cultural barriers cited here have recently been confirmed by the results of the Marshal inquiry in Nova Scotia.

Equity related issues also confront the Aboriginal communities. There are said to be less than five Aboriginal lawyers in Ontario and no judges or Crown Attorneys are currently represented in the system.

While many of these issues were raised by members of the Aboriginal community in Toronto, the site visit to Thunder Bay and interviews held in Northern Ontario provided further support for these observations.

For example, one of the major problems facing Aboriginals in the North is the stereotypic conceptions held of them by officers of the law, judges and other members of the system. Aboriginal people are all thought to be drunks and law breakers. Members of the legal system have little, if any, knowledge about the cultures and societies of Aboriginal people. Cultural explanations for observed behaviours are rarely sought as noted in this example:





A Native person who had recently moved from a reserve into Thunder Bay went into a restaurant for a quick bite to eat leaving an unattended child in the car. Authorities were called and the child was taken from the parent who was deemed to be an 'unfit parent' in the family court. It was noted that there were cultural explanations for this, and other forms of behaviour, but legal professionals rarely take the time or make the effort to find alternate explanations.

Given entrenched stereotypes and a lack of cultural sensitivity, police, as well as members of the legal system tend to "point a finger at Native people without giving them the benefit of the doubt. "Native people have the cards stacked against them" to the point where they feel they are convicted before they enter a courtroom. Moreover, there is a pervasive belief that judges tend not to believe testimony which favours an Aboriginal person on trial.

A grave concern on reserves in the North relates to access to legal counsel. It was noted that sometimes the Ministry flies in legal staff to conduct a trial. Often however, the staff arrive on the day of the trial which does not even allow time for the client to be interviewed!

It was also noted that Duty counsel do not spend enough time in cases involving either racial minorities or Aboriginal people. In



Thunder Bay, this issue is particularly exacerbated because the provincial court room lacks interview rooms. Clients are interviewed in any convenient spot including washrooms!

Justices of the Peace were also thought to be insensitive to racial minorities and Aboriginal peoples. In situations of domestic violence, Justices of the Peace were especially criticized for not being empathetic to the women. It is thought that there is a tendency for them to disbelieve the stories of Aboriginal (and other racial minority) women. In many instances, the woman may be experiencing shame or is intimidated by her fear that she might become a victim of abuse again, but JP's remain insensitive to these issues and behave in highly bureaucratic ways.

Service related problems were also cited in family and child custody cases. These issues are also found in the larger urban centres, but they are dramatically highlighted in the more isolated regions of the Province. In cases where child custody and the office of the Official Guardian are concerned, an Aboriginal spokesperson said:

"Often you go into court and find there's absolutely no knowledge whatsoever - no one, neither the judge or the workers in the Official Guardians panel who represent the parents in these cases - know anything about Indians. To them, an Indian is an Indian. Mohawk, Ojibwa, Iroquois, it doesn't matter. When it comes to placing a child with an Indian family, they take a Cree child and place it with a Mohawk family. And if you point that out to them - that they



have not done their duty - they become offended by that and ask us: 'how much must we do? Is anything ever enough for you people'?

The Native courtworker program is the only specific Ministry supported program geared to the needs of the Aboriginal population. It was at various times, both praised and criticized. In general, the idea of the court worker is thought to be useful but its implementation leaves much to be desired. For example, it was noted everywhere that the program was underfunded and overstretched. In the Northern areas in particular, it was said that "they are stretched to the limit, they are unable to focus on preventative measures". The large numbers of Aboriginal peoples in the courts places unrealistic demands on the court workers who are forced to carry very high case loads. Their general effectiveness is therefore questioned.

In addition, critics point to the fact that the program has been in existence for nearly 20 years and "2% of the population is Native and 10% of the inmates in jail are Native, so are these programs really working?"

In sum, the concerns of the Aboriginal community with the present system are so serious that the majority have given up on it because they feel that it cannot give them equitable service. The majority of Aboriginal groups in this province support the idea of a





separate Native justice system. There is, however, said to be little support for this position within the Ministry.



## 9 - RECOMMENDATIONS

The many respondents in this study made many valuable suggestions for improving the justice system. It was quite clear that many of them had given these matters considerable thought because they needed little prompting to discuss their ideas and recommendations.

By way of summary, the recommendations made can be grouped into the following categories:

### 1 - Address the Need for Representation and Equity

- Implement an employment equity program to hire more members of racial and ethnic minorities into the entire system but especially:
  - \* the appointment of more Judges
  - \* the appointment of more Justices of the Peace
  - \* hiring more Crown Attorneys
- Work with the Law Society, and Law Schools to establish programs and incentives to encourage more minorities to enter into law schools throughout the province
- Encourage law firms to create more articling and employment opportunities for minority lawyers



## 2 - Cross Cultural and Race Relations Training

- All Ministry staff, both frontline and managerial staff such as Crown Attorneys should receive cross cultural and race relations training
- All Judges should receive cross cultural and race relations training

## 3 - Language and Interpretation

- Provide better and more translations and interpretation services
- Provide training for translators and interpreters
- Expand the cultural interpreter program

## 4 - Community Outreach and Public Education

- Provide more information, counselling and workshops to publicize the services of the Attorney General in the Community:
  - \* publish informational resources in many languages
  - \* establish extensive and comprehensive educational programs using audio visuals and resource persons to be disseminated to community clinics, community centres, schools, etc.
  - \* work with the Ministry of Education to design and introduce into the curriculum a component which deals with people's rights and responsibilities





- \* design and deliver many different types of outreach programs: develop more effective forms of communication , e.g, videos, regarding the services of the Ministry
- \* provide information to newly arrived immigrants as part of an orientation program

#### 5- Address the Need for More Community Consultation

- establish a process or mechanism for ongoing consultation with community groups
- create network linkages with community based organizations

#### 6 - Establish an Interministerial, Cabinet or Standing Parliamentary Committee to Integrate the Services of the Attorney General, Solicitor General and Corrections

- \* Remove Native Affairs from the Ministry of the Attorney General and create a separate Ministry

#### 7- Provide more Decentralized Service Throughout the Province

- \* Open more service delivery offices in the province

#### 8 - Streamline and Simplify all Administrative Forms

#### 9 - Provide more Funding to Aboriginal Communities to Develop the Court Worker Program

- \* Establish more Aboriginal Legal Centres

#### 10 - Establish More Neighbourhood Community Clinics



## 10 - CONCLUSIONS

The findings of this community consultation indicate that there is a widespread perception that the services of the Ministry of the Attorney General - broadly defined to include the administration of the Criminal Justice System - do not meet the needs of racial minority group constituents. There are substantial numbers of gaps and omission in service delivery which result in frustration, cynicism, pain and unnecessary suffering.

There is also a widely held belief that racial bias and racial discrimination seriously impact on the access and participation of minority group members to the services of the Attorney General.

In very general terms, racial minorities do not believe that the system is equitable.

There is a urgent need to recognize these perceptions because this system does not work for racial minorities and Aborigines. They lack belief, faith and trust in what they believe to be one of the most important institutions in a democratic society. The creation of legislation guaranteeing and protecting human rights and the administration of justice are, it is recognized, one of the hallmarks of a society which prides itself on equitable and fair treatment of all of its citizens.



In fact, many of these ethnocultural and racial minority groups, and especially the growing numbers of refugees from politically repressive countries, come to Canada because they believe that both the laws and the ways in which they are administered will provide them with safety, security and just treatment. If, however, there is a pervasive view that the system is not accessible and equitable, this foreshadows very serious consequences for the future stability of this society.

Two strategies for further action should be considered. First, there is strong indication that one of the most pressing needs involves a process of race relations training to create a more knowledgeable and sensitive system. Two groups especially singled out for training by the community were judges and crown attorneys. Other courtroom personnel, although not specially mentioned, might, however, also be included. (It is understood that race relations and multicultural training is already being offered to senior managers.) In general terms, the system, and especially those highly placed in it, must respond to the unmet needs in the community by raising its level of knowledge, skill and sensitivity in order to more effectively respond to the challenges (and problems) created by diversity.





Second, community perceptions are necessary and valuable in order to inform and guide the Ministry. They are not, however, by themselves sufficient to develop and implement new policies, plans and procedures. There is an urgent need to do systematic research on the many issues raised in this report. The perceptions of unequal and discriminatory treatment should be studied systematically in order to see if the perceptions of the community have real validity. While these perceptions should be taken very seriously, there is now a need to go beyond perceptions to the level of hard, concrete, empirical reality.



APPENDIX A - QUESTIONNAIRES



QUESTIONNAIRE - THE SERVICES OF THE MINISTRY OF THE ATTORNEY  
GENERAL

Instructions

If you are an officer of an ethnocultural group, please answer these questions with respect to the attitudes and perceptions of your group.

If you are an officer of a community or legal service agency, please answer these questions from the perspective of the racial minority clients you provide service to.

If you are a member or officer of any other kind of occupation or group, again, please answer these questions from the point of view of the experiences and perceptions of those racial minority groups that you are in interaction with or have knowledge about.

You may also recount your own personal experiences.

-----

1. Please give the name of your group or organization.

-----

2. Describe the kinds of service you offer to your clients.

-----  
-----  
-----

3. Have you had any contacts with the judicial system?

yes      no      other

a. Criminal courts

b. Family courts

c. Civil courts (e.g. small claims)

4. If yes, please describe the nature of your contact.

-----  
-----





5. Have you had any contact with other services provided by the Ministry of the Attorney General?

yes   no   don't know

- a. Office of the Official Guardian
- b. Office of the Public Trustee
- c. Support/Custody Order Enforcement
- d. Victim-Witness
- e. Other (list)

6. (If yes to 5) Can you describe the nature of your contact with any of these?

-----  
 -----  
 -----

7. Describe some of the common barriers facing your group or community with respect to the legal system.

-----  
 -----  
 -----  
 -----

8. How do racial or visible minority people feel about the way they are treated by judges?

-----  
 -----  
 -----  
 -----

9. Is there a belief that some judges are prejudiced against racial minority people?

yes            -----  
 no             -----  
 sometimes -----  
 don't know -----



9. How do racial minority people feel about the way they are treated by crown attorneys?

-----  
 -----  
 -----  
 -----

10. How do other legal staff treat minority defendants and plaintiffs?

-----  
 -----  
 -----

11. Are minority people familiar with the law and their rights?

yes -----  
 no -----  
 don't know-----

12. Are minority people familiar with the services of the Ministry of the Attorney General?

very familiar ----  
 somewhat familiar---  
 not familiar ---  
 don't know ----

13. Do minority people receive help before they go into court?

yes ----  
 no ----  
 sometimes ----  
 don't know ----



14. If yes to question 13, from whom do they receive help?

lawyer	----
legal aid clinic	----
counselling agency	----
friends, peer group	----
parents	----
school	----
religious group	----
other (specify)	----

15. How do minority people find lawyers?

legal aid clinic	----
social agency	----
friends	----
religious group	----
other (specify)	----





16. Please answer the following questions by checking a number code:

Believed Strongly	=	5
Believed Moderately	=	4
Believed Somewhat	=	3
Not Believed	=	2
Don't Know	=	1

IS THERE A BELIEF AMONG RACIAL MINORITY PEOPLE THAT:

5      4      3      2      1

- a. when they are charged with criminal offenses such as rape, homicide or robbery, they are treated unjustly?
- b. racial minorities receive harsher sentences than others convicted of the same offenses
- c. they are charged more often
- d. they are treated differently in the courts
- e. they stand a better chance if defended by a white lawyer
- f. court room personnel are insensitive to racial minorities
- g. a white lawyer can better represent a case compared to a lawyer from their own minority group
- h. visible minority lawyers are themselves discriminated against in court
- i. there is a lack of information on the services of the Attorney General
- j. the services of the Attorney General are just and appropriate



5    4    3    2    1

k.    the Attorney General is not committed  
to establishing links with minority  
communities

l.    the services of the Attorney General are  
not representative of minority community  
needs

m.    the Attorney General needs to improve  
community outreach

17.   If you had the opportunity, what type of programs would you  
develop to better serve the needs of members of ethnic and racial  
groups?

-----  
-----  
-----  
-----

18.   Please add any other comments about the services offered by  
the Ministry of the Attorney General either from the perspective  
of your own experiences or that of racial minority groups.

Please indicate which group you are  
most familiar with:

Black	----
South Asian	----
S.E. Asian	----
Other (specify)	----



QUESTIONNAIRE - THE SERVICES OF THE MINISTRY OF THE ATTORNEY  
GENERAL

Instructions

Please answer these questions from the perspective of Native Peoples and Associations.

You can also recount your own personal experiences.

-----  
1. Please give the name of your group or organization.

-----  
2. Describe the kinds of service you offer to your clients.  
-----  
-----  
-----

3. Have you had any contacts with the judicial system?

yes      no      other

- a. Criminal courts
- b. Family courts
- c. Civil courts (e.g. small claims)

4. If yes, please describe the nature of your contact.  
-----  
-----

5. Have you had any contact with other services provided by the Ministry of the Attorney General?

yes    no    don't know

- a. Office of the Official Guardian
- b. Office of the Public Trustee
- c. Support/Custody Order Enforcement
- d. Victim-Witness
- e. Other (list)





6. (If yes to 5). Can you describe the nature of your contact with any of these?

-----  
 -----  
 -----

7. Describe some of the common barriers facing your group or community with respect to the legal system.

-----  
 -----  
 -----  
 -----

8. How do native peoples feel about the way they are treated by judges?

-----  
 -----  
 -----  
 -----

9. Is there a belief that some judges are prejudiced against native people?

yes -----  
 no -----  
 sometimes -----  
 don't know-----

9. How do racial minority people feel about the way they are treated by crown attorneys?

-----  
 -----  
 -----  
 -----

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PH.D. THESIS

BY

JOHN H. COOPER

IN THE DEPARTMENT OF CHEMISTRY

Submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy

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10. How do other legal staff treat native defendants and plaintiffs?

-----  
 -----  
 -----

11. Are native people familiar with the law and their rights?

yes -----  
 no -----  
 don't know-----

12. Is there a conflict between native belief systems about law and justice and the provincial legal system? Please describe some of the differences.

-----  
 -----  
 -----  
 -----

13. Are there particular cultural barriers which interfere with the administration of provincial justice in the native communities? Please describe them.

-----  
 -----  
 -----  
 -----  
 -----

14. Are native people familiar with the services of the Ministry of the Attorney General?

very familiar ----  
 somewhat familiar---  
 not familiar ---  
 don't know ----



13. Do native people receive help before they go into court?

yes	----
no	----
sometimes	----
don't know	----

14. If yes to question 13, from whom do they receive help?

lawyer	----
legal aid clinic	----
counselling agency	----
friends, peer group	----
parents	----
school	----
native organization	----
other (specify)	----

15. How do native people find lawyers?

legal aid clinic	----
social agency	----
friends	----
religious group	----
native organization	----
other (specify)	----





16. Please answer the following questions by checking a number code:

Believed Strongly	=	5
Believed Moderately	=	4
Believed Somewhat	=	3
Not Believed	=	2
Don't Know	=	1

IS THERE A BELIEF AMONG NATIVE PEOPLE  
PEOPLE THAT:

5      4      3      2      1

- a. when they are charged with criminal offenses such as rape, homicide or robbery, they are treated unjustly?
- b. racial minorities receive harsher sentences than others convicted of the same offenses
- c. they are charged more often
- d. they are treated differently in the courts
- e. they stand a better chance if defended by a white lawyer
- f. court room personnel are insensitive to racial minorities
- g. a white lawyer can better represent a case compared to a lawyer from their own minority group
- h. visible minority lawyers are themselves discriminated against in court
- i. there is a lack of information on the services of the Attorney General
- j. the services of the Attorney General are just and appropriate



5 4 3 2 1

- k. the Attorney General is not committed to establishing links with native communities
- l. the services of the Attorney General are not representative of native community needs
- m. the Attorney General needs to improve community outreach

17. If you had the opportunity, what type of programs would you develop to better serve the needs of members of ethnic and racial groups?

-----  
 -----  
 -----  
 -----

18. Please add any other comments about the services offered by the Ministry of the Attorney General either from the perspective of your own experiences or that of native groups.

THANK YOU FOR YOUR COOPERATION



APPENDIX B - LIST OF ORGANIZATIONS - SURVEYED/INTERVIEWED

Nishnabe Gamik Friendship Centre  
Native Canadian Relations Team Area  
Native Community Crisis Team  
Native Canadian Friendship Centres

Ottawa Japanese Community Association  
Hong Fook Mental Health Service  
Metro Toronto Chinese and South East Asian Legal Clinic  
Korean Canadian Association  
Ngo Tran - Vietnamese Community Association  
Laos Association of Ontario

South Asian Social Services Organization  
South Asian Social Services - Ottawa  
Tamil Eelam Society of Canada  
South Asian Centre - Toronto  
South Asian Centre - Windsor

Tropicana Community Services  
United Black Women of Ottawa  
Jamaican Canadian Association  
Windsor Black Coalition  
Thunder Bay Afro Caribbean Association  
Caribbean Students Association  
Whyy Mee  
Centre for Spanish Speaking People  
Thunder Bay Central American Association

Ontario Legal Aid Plans, Ontario, Hamilton, Carleton  
York County Legal Aid Plan

Safe -T Thistletown Regional Centre  
Interface Service  
York Community Service  
Urban Alliance on Race Relations  
Community Legal Education, Ontario  
Scarborough Women's Centre  
Northwood Neighbourhood Services  
Flemingdon Community Legal Services  
Community Legal Education, Ontario  
Scarborough Community Legal Services  
Agincourt Community Services  
Jane Finch Community Legal Service  
Parkdale Legal Clinic  
Children's Aid Society  
Rexdale Women's Centre  
National Capital Alliance Ottawa





Harambee Services, Toronto, Ottawa  
Immigrant Aid Services, Ottawa  
Multicultural Association of North West Ontario  
Immigrant Women Planning Committee, Thunder Bay  
Thunder Bay Youth Friendship Centre  
Thunder Bay Mayor's Committee on Race Relations  
Thunder Bay Legal Clinic  
CANACT  
Council of Race Relations and Policing  
Multicultural Council of Windsor, Essex County  
Windsor Urban Alliance on Race Relations  
Women Working with Immigrant Women

(In addition, individuals without organizational affiliations were also interviewed)



## APPENDIX C

### The Interview Sample

<u>Sex</u>	<u>Men</u>	<u>Women</u>	
	36	29	(65)

---

<u>Estimated Age</u>	<u>Under 30</u>	<u>Over 30</u>	
	11	54	(65)

---

#### Race/Ethnicity:

Black*	22
South Asian	9
South East Asian	10
Aboriginal	4
White**	20
	---
	65

---

\* Primarily persons of Caribbean origin but includes five persons of African origin.

\*\* Includes 8 persons of Central and South American origin and 2 from the Middle East.

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ATTORNEY GENERAL  
LAW LIBRARY